United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7295

B

P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

FOR THE SECOND CIRCUIT

CARL A. BEAZER, *et al.*,

Plaintiffs-Appellees-Cross-Appellants,

—against—

NEW YORK CITY TRANSIT AUTHORITY, *et al.*,

Defendants-Appellants-Cross-Appellees.

UNITED STATES COURT OF APPEALS
FILED
MAR 11 1977
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume I — Pages 1a–451a

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PAGINATION AS IN ORIGINAL COPY

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Docket Entries

[illegible] vs. New York, City Transit Authority JUDGE GRIESA

Pg. #2

72 CIV. 5367

DATE	PROCEEDINGS	Date Order Judgment
Dec.15-72	Filed complaint & issued summons.	
Jan.10-73	Filed stip & order that time of deft's as indicated to answer the, complaint is ext. to 2-9-73. So ordered, Griesa,J.	
Feb.13-73	Filed pltff's affidavit & notice of motion ret. before Griesa,J. on 2-21-73 for class suit determination.	
Feb.13-73	Filed pltff's memorandum of law in support of their motion ret.2-21-73.	
Feb.23-73	Filed stip & order adj. pltff's motion for a class action ret, 2-21-73, to 4-10-73. So ordered,Griesa,J.	
Feb.23-73	Filed stip & order that pltff's motion for a class action & deft's, motion for dismissal & summary judg. ret. 2-27-73 adj. to 4-10-73. So ordered, Griesa,J.	
Feb.26-73	Filed Summons with Marshal's returns: Served:	
	New York City Transit Authority on 12-20-72	
	Wilbur B. McLaren on 12-20-72	
	Mortimer Gleeson on 12-21-72	
	Justine N. Feldman on 12-21-72	
	Donald H. Elliott on 12-21-72	
	Frederic B. Powers On 12-30-72	
	William I. Butcher on 1- 2-73	
	Eben W. Pyne on 1- 6-73	
	Harold L. Fisher on 1- 9-73	
	Leonard Braun on 1-15-73	
	Department of Personnel of the City of New York on 1-18-73	
	Civil Service Commission of the City of New York on 1-18-73	
	David Stadtmauer on 1-30-73	
	William A. Shea on 2- 6-73	
	Louis Lanzetta on 2- 8-73	
	Harry I. Bronstein on 2- 8-73	
	William J. Ronan on 2- 8-73	
	Lawrence R. Bailey on 2-12-73	
	James W. Smith on 2-13-73	
Mar 21-73	Filed Deft's ANSWER to the complaint,	Corp
May3-73	Filed MEMO-END. on motion dtd 2-13-73. Motion granted. The prerequisites of treatment under FRCP 23(b)(2) are met, as far as the present record shows, There is no opposition to the motion. GRIESA,J. (mn)	
May3-73	Filed deft N.Y. C. Transit Authoritetc. notice of motion ret: 2-27-73 re: dismissal etc.	
May3-73	Filed MEMO-END. on motion to dismiss dtd this date. This motion to dismiss the complaint and for summary judgment is denied. There are sufficient allegations in the complaint to indicate the existence of factualissues for trial, at least as far as the present record shows. GRIESA,J. (mn)	
May3-73	Filed ORDER TO SHOW CAUSE for leave to appear amicus curiae ret: 4-18-73.G	
May3-73	Filed MEMO-END. on order to show cause. Motion granted. GRIESA,J. (mn)	
[illegible]	Filed copy of [illegible] B.[illegible]NYC Transit Authority,et al ANSWER to complaint.J.	
Jun 22-73	Filed pltffs interrogatories addressed to certain defts, and request for the production of documents.	

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	Filed
Jun 29-73	Pltffs Interrogatories addressedto Lawrence R. Bailey.
Jun 29-73	Filed pltffs Interrogatories addressed to deft. Leonard Braun & request for doc
Jun 29-73	Filed pltffs Interrogatories addressed to deft. William A. Shea & request for d
Jun 29-73	Filed pltffs Interrogatories addressed to deft. Donald H. Elliott & request for
Jun 29-73	Filed pltffs Interrogatories addressed to deft. M. Gleeson & request for documt
Jun 29-73	Filed pltffs request for production of documents & Interrogatories addressed to William L. Butcher.
Jun 29-73	Filed pltffs Interrogatories addressed to deft. Frederic B. Powers. & request documents.
Jun 29-73	Filed Pltffs Interrogatories addressed to the deft. J.N. Feldman & request for
Jun 29-73	Filed pltffs Interrogatories addressed to the deft. E.W. Pyne & request for th ion of documemnts.
Jun 29-73	Filed pltffs Interrogatoreis addressed to the deft. W.J. Ronan & request for do
Jul 2-73	Filed pltffs Interrogatories addressed to the deft. H.I. Bronstein & David Stad and James W. Smith & request for the production of docuemts.
Jul 5-73	Filed affidavit of service by John Maldonado for the pltff.
Jul 5-73	Filed defts affidavit of service by Elizabeth B. DuBois.
Jul.9,73	**Filed change of address of Legal Action Center. (See front Sheet)**
Sep. 25-73	Filed affdvt. of Gilbert T. Dunn in opposition to pltffs' motion to amend & su plement pleadings, to add a party pltff.
Sep. 25-73	Filed memorandum in support of pltffs' motion to amend & supplement pleadings
Sep. 25-73	Filed pltffs' affdvt. & notice of motion to amend pleadings and to add party pltff.-ret. 7-23-73-
Sep. 25-73	Filed memo endorsed on motion filed 9-25-73-Motion to amend pleadings & to add party pltff. granted-So ordered-Griesa,J.-mailed notice
Oct. 26-73	Filed defts' answers to pltffs' interrogs.
Oct. 26-73	Filed defts' interrogs. and request for production of documents.
Oct. 30-73	Filed affdvt. of Eric D. Balber in support of pltffs' motion to amend pleadin
Oct. 30-73	Filed memorandum in support of pltffs' motion to amend the pleadings.
Oct. 30-73	Filed memo endorsed on affdvt. filed 10-30-73--There being no opposition, the motion is granted. Pltffs. are to file and serve their amended complaint within ten days-- So ordered--Griesa,J.-m.n.
Oct. 31-73	Filed pltff's affdvt. & show cause order for a temporary restraining order and a preliminary injunction-ret.10-29-73-- Griesa,J.
Oct. 31-73	Filed memo endorsed on show cause order filed 10-31-73-Action on motion defer as per minutes of hearing 10-29-73-Smith withdraws application insofar as directed to preventing hearing of 10-31-73 and obtaining immediate reinstat ment of back pay. Smith is to be given one week's notice before any dismiss goes into effect.-So ordered-Griesa,J.-mailed notice

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Docket Entries

72 Civ. 5307 Carl A. Beazer, et al -v- NYC Transit Authority, et al 72 Civ. 53

 GRIESA, J.

DATE	FILINGS—PROCEEDINGS	RECEIVED EMPLOYMENT OPPT.
Nov. 9-73	Filed defts' answers to interrogs.	
Nov. 9-73	Filed order that the Beth Israel Methadone Maintenance Treatment Program, et al produce at the offices of counsel for pltffs. all methadone maintenance treatment program or other medical records in their custody--said photocopies are to be conveyed within 3 business days of the receipt of said records by pltffs' counsel unless objections to their conveyance have been submitted to the Court within that time period--Griesa,J.--mailed notice	
Nov. 20-73	Filed transcript of record of proceedings of 10-29-73-Griesa,J.	
Nov. 27-73	Filed deft's (Ronan) answers to interrogs.	
Nov.30-73	Filed defts.Answers to pltfs interrogatories, First Supplement.	
Nov.30-73	Filed ANSWERS of Defts. N.Y.C. Transit Authority, et al to amended complaint.	
Dec.5-73	Filed defts. N.Y.C.Transit Authority, notice of deposition of U.S. Veterans Administration,Methadone Maintenance Program.	
Dec.5-73	Filed defts. N.Y.C. Transit Authority, notice of deposition of Methadone Maintenance Treatment Center.	
Dec.5-73	Filed defts. N.Y.C. Transit Authority, notice of deposition of Beth Israel Methadone Maintenance Treatment Program.	
Dec. 27-73	Filed notice of deposition and request for production of documents by pltf. Testimony of Louis Lanzetta.	
Dec.27-73	Filed pltf. notice of deposition and request for production of documents, of William J. Ronan.	
Dec.27-73	Filed pltf. notice of deposition of Justin Feldman;and request for production of documents.	
Dec.27-73	Filed pltf. notice of deposition of Lawrence Bailey, and request for production of documents.	
Dec.27-73	Filed pltf. notice of deposition of New York City Transit , and request for production of documents.	
Dec. 27-73	Filed pltf. notice of deposition of Wilbur McLaren, and request for for production of documents.	
Dec.27-73	Filed pltf. notice of deposition of Leonard Braun, and request for production of documents.	
Dec.27-73	Filed affdvt. of service of notice of deposition.	
Jan.4-74	Filed pltf. notice of deposition of William Butcher, and request for production of documents.	

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Docket Entries

. 5307 Carl A. Ponzer, et al -v- NYC Transit Authority, et al

CIVIL DOCKET Page 5 TRIN A, J.

DATE	FILINGS--PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
Jan. 14-74	Filed order amending order dated 11-8-73 so as to include any and all records in the custody of Harris J. Bernstein Institute and any other hospital, institution or methadone maintenance treatment program re: Carl A.Ponzer, Francisco Diaz, Jose R. Reyes, Malcolm Frasier or Vannie A. Smith aka Alfred E.Costello--Griesa,J.-mailed notice.			
Jan. 18-74	Filed pltffs' affdvt. & show cause order re: transcripts of all depositions, etc. ret. 1-21-74, at 1:00 P.M.			
Jan. 18-74	Filed stip.& order that all methadone maintenance treatment program or other medical records, may be used solely for the purpose of defending the action--that said records are otherwise absolutely confidential and may not, be disclosed by defts. to any persons not parties to the action--Griesa,J.			
Jan. 22-74	Filed order that the depositions to be taken by defts. may not be used for any criminial investigation or prosecution of said persons; that the transcripts of said depositions are to be sealed except and until otherwise ordered by this Court; and that the only persons to be presentat said depositions are to be parties to this action, their counsel, and stenographic personnel--Griesa,J.-m.n.			
Jan. 25-74	Filed affdvt. of service by an individual of show cause order.			
Feb. 5-74	Filed affdvt. of Malcolm Frasier re: answers to interrogt.			
Mar. 15-74	Filed pltffs' notice of taking deposition of Harold L. Trigg,M.C. & request for productions of documents.			
Mar. 25-74	Filed pltffs' notice of taking deposition of Harold Shannon			
Mar. 28-74	Filed pltffs' notice to take deposition			
Apr. 3-74	Filed pltffs' affdvt. & show cause order directing Harold L. Trigg to answer oral interrogs.--ret. 4-4-74			
Apr. 3-74	Filed pltffs' memorandum of law in support of motion			
Apr. 5-74	Filed memo endorsed on pltffs' show cause order filed 4-3-74--Motion granted in part and denied in part. See minutes of April 4-4-74--So ordered-Griesa,J.-m.n.			
May 8-74	Filed pltffs notice to take deposition of Wm. J. Ronan, & request for production of documents.			
May 8-74	Filed pltffs notice to take deposition of L. R. Bailey, & request for production of documents.			
May 8-74	Filed pltffs notice to take deposition of Leonard Braun, & request for production of documents.			
May 8-74	Filed pltffs notice to take deposition of Justin N. Feldman, & request for production of documents.			
May 8-74	Filed notice to take deposition of Wm. L. Butcher, & request for production of documents.			

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Docket Entries

72 Civ. 5307 CARL A. BEAZER, et al -v- NYC TRANSIT AUTH., et al GR

PAGE #6

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
JAN 28-74	Filed transcript of record of proceedings, dated Nov 14, 1973			
AUG 5 74	Filed transcript of record of proceedings, dated APR 4 74			
Jun 26-74	Filed pltff's notice of taking deposition upon oral examination & request for production of documents.			
Jul 10-74	Filed pltffs' supplemental interrogs.			
Jul.18-74	Filed pltffs request for defts to answer interrrogs, & for production of documents.			
Aug.16-74	Filed deft (Transit)answers to interrogs & request for production of documents.			
Sep.10-74	Filed sealed envelope of papers pursuant to Order of 11-8-73....GRIESA,J. (Placed in Cashiers's vault)			
Oct.15-74	Filed pltffs response to defts proposed findings of act & Counter proposals of defts.			
Oct.17-74	Filed pltffs pre-trial brief on the law.			
Oct.17-74	Filed affdvt of service by Elizabeth B. DuBois.			
Oct.17-74	Filed pltffs compilation of agreed to & contested facts.			
Oct.18-74	Filed defts (Transit) pretrial memorandum.			
Oct.18-74	Filed defts (Transit) proposed findings of fact.			
Oct.22-74	Filed deposition of Carl A. Beazer of 1-22-74.			
Oct.22-74	Filed defts deposition of Francisco Diaz of 2-4-74.			
Oct.22-74	Filed defts deposition of Jose Ramon Reyes of 1-29-74.			
Oct.22-74	Filed defts deposition of Malcolm Kenneth Frazier of 3-12-74.			
NOV 18-74	Filed transcript of record of proceedings, dated OCT 22, 24, 25, 29-1974			
NOV 18-74	Filed transcript of record of proceedings, dated OCT 30-1974			
Dec 3-74	Filed transcript of record of proceedings, dated Nov 17, 1974			
Dec.17-74	Filed pltffs memo in response to deft (Transit Auth.) motion to dismiss.			
Jan.2-75	Filed Order determining that that Drs. Dole, Etzioni, Gollance, Kreek, Lukoff, Trigg, Primm, Rosenthal & Higgins, are to appear & testify at the trial of this action, on date & time specified.....GRIESA,J			
Jan.29-75	Filed Order directing Dr. Judianne Densen-Gerber to appear & testify at the trial in this action on 1-28-75 at 2:00 P.M. m/n. GRIESA,			
Feb.19-75	Filed pltffs affdvt of service of filing of memorandum relating to to Transit Auth. tour on the Court.			
Feb.19-75	Filed pltffs memorandum relating to Transit Authority Tour conducted 11-13-74.			
Feb.21-75	Filed pltffs memo relating to federal regulation of the confidentiality of methadone maintenance treatment program records.			

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Docket Entries

5307 CARL A. BEAZER, etal -v- NYC TRANSIT AUTHORITY, etal 72 Civ 530

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
Feb. 21-75	Filed pltffs memo relating to the structure of the TA employment system, etc.			
5-12-75	Filed transcript of record of proceedings, dated Oct. 24,1974			
5-12-75	Filed transcript of record of proceedings, dated Oct. 29, 1974			
5-12-75	Filed transcript of record of proceedings, dated Jan 2, 1975			
3-6-75	Filed OPINION #42931 & ORDER. This class action against the TA, NYC Civil Service Comm., & the NYC Personnel Dep't, & certain officials thereof, challenges the blanket exclusion from any form of employment in the NYC subway & bus systems, all former heroin addicts participating in methadone maintenance programs regardless of the individual merits of the employee or applicant, & against those who have successfully concluded participation. The Amended complt alleges that this policy violates due process & equal protection clauses of the Fourteenth Amendment & Federal Civil Rights Statutes. Pltffs also allege the exclusionary policy affecting blacks & hispanics, resulting in violation of the Civil Rights Act of 1964, & they seek declaratory & injunctive relief on behalf of the class, & certain monetary on behalf of the named pltffs. For the many reasons indicated in this opinion, I hold that the TA's blanket ban against the employment of all present & past methadone maintained persons in any position in the TA, is a violatio of the due process & equal protection clauses of the Fourteenth Amendment. I wish to stress certain things not compelled by my holding. The TA is not required to hire any past or present methadone maintained person where there is a legitimate reason to question the persons ability or competence, etc., as indicated. As to the NYC Civil Servic Comm., or the NYC Personnel Dep't or officials connected with these two entities, there is no showing of any wrongdoing or need for relief. The TA will be directed to re-examine the employability of each of the four named pltffs & submit its conclusions to the Court. The Court will then determine whether any named pltff should be reinstated or hired & what rights to back pay there are, if any. In re to the class, pltffs are directed to submit a proposed //////// Con't on Page 8			

D. C. 110

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DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
	...injunction based on the principles in this opinion, & ...& comment upon pltffs proposal. The ...should contain certain basic directions & guidelines. ..., the Court will retain jurisdiction for a period of ...implement the injunction.....GRIESA,J m/n			
9-14-75	Filed transcript of record of proceedings, dated Oct 25, 1974			
9-14-75	Filed transcript of record of proceedings, dated Jan. 7, 9, 10, 75			
10-9-75	Filed Pltffs' Notice of Motion for Counsel Fees & Costs....ret 10-23-75...at 10AM			
10-9-75	Filed Pltffs' Memo in suppor of motion for costs.			
11-28-75	Filed pltffs' reply memorandum in support of their motion for costs and attys' fees.			
11-28-75	Filed pltffs' memorandum in support of their proposed order and in opposition to deft. Transit Authority's proposed counter-Order.			
05-06-76	Filed supplemntal Opinion # 44357-- for the reasons stated, in a Title VII case, atty's fees are normally awarded to the prevailing party, unless there are exceptional circumstances indicating that such an award should not be made. No such circumstance exist in the present case. Pltffs. are clearly entitled to a fee award. A hearing will be held on the amount of the award. So ordered- GRIESA, J. (m/n)			
05-13-76	Filed Permanant Injunction and Judgment--- that defts. N.Y. City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, their members, directors, etc. are permanently enjoined and restrained as indicated and that the action be dismissed as to Civil Service Commission of the City of N.Y. and the Personnel Dept. of the City of N.Y., Harry I. Bronstein, Chairman of the Civil Service Commission and Director of the Personnel Dept., and David Stadtmauer and Hames W. Smith, members of the Civil Service Commission, and their successors in office without costs. GRIESA, J. Judgment entered- 5-20-76 Clerk (m/n)			
6-15-76	Filed Undertaking for costs on appeal in the sum of $250.00- Fidleity and Deposit Company of Maryland.			
06-15-76	Filed Notice of Appeal of defts New York City Transit Authority The Manhattan & Bronx Surface Transit Operating Authority & their membe directors,etc. to USCA from the Judgment entered on 5-20 -76 of DC Notices mailed to:Elizabeth B.DuBois,atty for pltffs.271 Madison Av NYC 10016 and W.Bernard Richland,Atty. for Civil Service Commission City of N.Y., Corporation Counsel,Municipal Bldg.NYC 10007.			
7-7-76	Filed Order extending time of deft NYC transit Authority to submit written statement as to employability of pltffs Carl A.Beazer,Jose R.Reyes, Francisco Diaz and Malcolm K.Frazier -30 days to July 19,1976.GRIESA.			

CONTINUED ON PAGE NO. 9

Docket Entries

IV 5307 BEAZER, CARL A. ETAL VS. NEW YORK CITY TRANSIT AUTHORITY,

(Pe. #9)

D. C. 110 Rev. Civil Docket Continuation GRIESA, J.

DATE	PROCEEDINGS
07-21-76	Filed TRUE COPY of USCA 2nd Circuit Stip and Order that above appeal may be withdrawn without costs and without attys' fees and without prejudice ,etc. as indicated.
09-28-76	Filed Pltffs. Notice of Motion to issue the annexed proposed order supplementing and modifying the permanent injunction and judgement entered on 05-20-76.
09--28-76	Filed Pltffs. Memorandum in Support of Motion to Supplement and modify the Court's Order of 05-20-76.
09-28-76	Filed Appendix "E" to the Memorandum in Support of the Motion to Supplementand Modify the Courts Order of 05-20-76.
11-1-76	**Filed Pltffs Affidavit and Notice of Motion for an order declaring defts' Liability for attys' fees and to fix amt of attys'fees RET:11-11-76**
11-1-76	**Filed Pltffs'Memorandum in support of motion to declare defts' liability for attys' fees and to fix amt of attys' fees.**
12-01-76	Filed defts. New York City Transit Authority, theManhattan & Bronx Surface Transit Operating Authority, and their members, etc. notice of appeal to USCA from the permanent injunction and judgment entered on 5-20-76. Copy to: Elizabeth B. DuBois, Esq., Legal Action enter of the City of N.Y.)
12-09-76	**Filed pltffs' reply memorandum in support of their motion to declare defts' liability for attys'fees pursuant to the Cibil Rights Attys' fees Awards Act of 1976 and to fix the amount of attys' fees.**
9/16/75	Filed transcript record of proceedings dtd: 1/27,28,31, 1975&2/3,7,1[illegible]
9/16/75	Filed transcript record of [illegible],dtd: 2/12/75
9/16/75	Filed transcript record of proceedings dtd: Dec. 12,16,1974
1/12/77	Filed amended complaint
4/6/73	Filed affidavit of Elizabeth DuBois and exhibits in opposition to to deft's motion to dismiss.
4/6/73	Filed affidavit of Eleanor Holmes Norton in opposition to def'ts mot: to dismiss
6/29/73	Filed pltff's interrogatories and requests for production of document
1/12/77	Filed amended complaint(class action)
1/12/77	Filed order and stipulation of authenticity of documents produced
1/12/77	Filed stipulation and order waiving requirement that deposition be s
1/12/77	Filed stipulation and order of authenticity of medical records.
01-14-77	**Filed notice thatthe record on appeal has been certified and transmitted to the USCA on this day.**
1-28-77	**Filed Amended permanent injunction and judgment as indicated....Griesa,J. m/n**
02-10-77	Filed defts. New York City Transit Authority, The Manhattan and Bronx Surface Transit Operating Authority, and their members, directors, officers, agents and employees sued herein notice of appeal to USCA from the Amended permanent Injunction and Judgment entered on 1-28-77. Copy mailed to: Legal Action Center of the City of N.Y., Inc.
02-15-77	Filed pltffs' notice of appeal to USCA from that part of paragraph 9 of the amended permanent injunction and judgment dismissing the claims of pltffs. Carl A. Beazer, Josh P. Hayes and Nathaniel Wright entered on 01-28-77. Copies to: Alphonse E. D'Ambrose and Corporation Counsel, City of N.Y. Int. 2-15-7

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

3/1/77
Mr. Dick
Clerk's Papers

001-06
12/15/72

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- X

CARL A. BEAZER;

JOSE R. REYES; and

FRANCISCO DIAZ, individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY;

WILLIAM J. RONAN, individually and in his capacity as a member and as Chairman and chief executive officer of the New York City Transit Authority, and his successors in office;

WILLIAM L. BUTCHER, LAWRENCE R. BAILEY, HAROLD L. FISHER, WILLIAM A. SHEA, EBEN W. PYNE, LEONARD BRAUN, JUSTINE N. FELDMAN, DONALD H. ELLIOTT, FREDERIC B. POWERS and MORTIMER GLEESON, individually and in their capacities as members of the New York City Transit Authority, and their successors in office;

WILBUR B. McLAREN, individually and in his capacity as executive officer for labor relations and personnel of the New York City Transit Authority, and his successors in office;

LOUIS LANZETTA, individually and in his capacity as medical director of the New York City Transit Authority, and his successors in office;

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK;

PERSONNEL DEPARTMENT OF THE CITY OF NEW YORK;

HARRY I. BRONSTEIN, individually and in his capacity as a member and as Chairman of the Civil Service Commission of the City of New York, and director of the Personnel Department of the City of New York, and his successors in office;

DAVID STADTMAUER and JAMES W. SMITH, individually and in their capacities as members of the Civil Service Commission of the City of New York, and their successors in office,

Defendants.

72 Civ.

COMPLAINT

(Class Action)

- X

PRELIMINARY STATEMENT

1. This action is brought on behalf of persons who have been denied employment and dismissed from employment by the New York City Transit Authority [hereinafter "Transit Authority"] solely because of their participation in methadone maintenance programs duly licensed and authorized pursuant to state and federal laws and regulations [hereinafter referred to as "duly licensed and authorized methadoné maintenance programs"]. The action challenges the present Transit Authority policy of refusing to employ in any position all persons participating in such programs, without regard to their individual ability to perform, as indicated by their record of performance on-the-job with the Transit Authority or elsewhere, their record of adherence to the requirements of the methadone program in which they are enrolled, or any other relevant criterion.

2. The policy is challenged on the ground that it discriminates unlawfully against persons participating in duly licensed and authorized methadone maintenance programs, since there is no basis for concluding that a person participating in such a program is less qualified to perform as an employee of the Transit Authority, solely because of such participation, than others accepted for such employment.

3. The Transit Authority's policy is further challenged on the ground that it discriminates unlawfully against former heroin addicts participating in duly licensed and authorized methadone maintenance programs, as compared to other former heroin addicts, including those participating in drug-free treatment programs. It is the Transit Authority's policy not to automatically dismiss, or deny employment to, former heroin addicts who

are not presently using drugs, but, rather, to consider their cases on an individual basis. There is no reasonable ground for concluding that former heroin addicts presently participating in a methadone maintenance program are less qualified to perform the duties of a Transit Authority employee than all other former heroin addicts.

4. The Transit Authority's policy of firing all employees participating in methadone maintenance programs is further challenged on the ground that it discriminates unlawfully against such persons, as compared to various other groups of employees which the Transit Authority concludes are not fully qualified to perform the duties of all its various positions. These include alcoholics and persons with such medical disabilities as epilepsy or heart conditions. It is the Transit Authority's policy not to fire such persons if they have three years' seniority but, rather, to consider their cases on an individual basis and assign them to job positions appropriate to their condition. There is no reasonable ground for concluding that methadone patients are, as compared to persons in these groups, less qualified to perform the duties of all the various positions in the Transit Authority.

5. The action charges, therefore, that the Transit Authority's policy with respect to methadone maintenance program participants, constitutes a denial of governmental employment to a particular class of persons without rational justification, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

6. The action further alleges that the Transit Authority's policy of excluding from employment persons in duly licensed and authorized methadone maintenance programs has a significant and substantial discriminatory impact on blacks and Hispanics[1/], since such programs' participants are disproportionately black and Hispanic as compared to the population eligible for employment with the Transit Authority. The policy is therefore challenged on the additional ground that it constitutes a racially discriminatory employment criterion which has not been and can not be demonstrated by the employer to be necessary to the safe and proper conduct of its business, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

7. The Transit Authority's policy is further challenged on the ground that it conflicts with federal laws and regulations authorizing methadone maintenance treatment as one means of dealing with the problem of drug abuse. It is alleged that the Transit

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1/ As used herein, the term "Hispanic" refers to persons who were born or who are descended from persons who were born in Puerto Rico, Cuba or other Caribbean countries.

Authority's policy burdens and impedes participation in duly licensed and authorized methadone maintenance programs in derogation of rights recognized by statutes and regulations of the United States.

JURISDICTION

8. This is a civil action brought under 42 U.S.C. § 1981, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States, including the right to contract; under 42 U.S.C. § 1983, to redress the deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States; and under the Fourteenth Amendment to the United States Constitution. Plaintiffs seek a declaratory judgment, pursuant to 28 U.S.C. § 2201, a permanent injunction, and such other relief as may be appropriate to remedy the unlawful discrimination practiced by defendants against plaintiffs and all others similarly situated. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343(3) and (4).

CLASS ACTION ALLEGATIONS

9. Plaintiffs bring this action on their own behalf and on behalf of all those similarly situated, pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

10. It is impossible to enumerate with any precision the members of the class, but it is clear that the class is so numerous that joinder of all members is impracticable.

11. The class consists of:

A. All those persons who have been dismissed f employment by the Transit Authority, or would in the fu be subject to dismissal, solely because of their partic n in duly licensed and authorized methadone maintenance programs;

B. All those persons whose applications for - ment with the Transit Authority have been rejected, c d in the future be subject to rejection, solely becaus eir participation in duly licensed and authorized methad maintenance programs;

C. All those persons who have been or wil he future be deterred from applying for employment with the Transit Authority by the Authority's policy of excluding from such employment all persons participating in duly licensed and authorized methadone maintenance programs.

12. The plaintiffs will fairly and adequately protect the interests of the class. Each of them either was dismissed from employment with the Transit Authority, or had his application for such employment denied, solely because of his participation in a duly licensed and authorized methadone maintenance program. Their claims are typical of the claims of the class.

13. The questions of law and fact common to the class include the following:

A. Whether the Transit Authority's policy of excluding from employment all persons participating in duly licensed and authorized methadone maintenance programs,

discriminates against such persons on an irrational basis, as compared to all other persons eligible for employment, and thereby violates the Due Process and Equal Protection Clauses to the Fourteenth Amendment to the United States Constitution;

B. Whether the Transit Authority's policy of excluding from employment all persons participating in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis, as compared to other former heroin addicts, including those participating in drug free treatment programs, and thereby violates the Due Process and Equal Protection Clauses to the Fourteenth Amendment to the United States Constitution;

C. Whether the Transit Authority's policy of dismissing from employment all persons participating in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis as compared to various other groups of employees which the Transit Authority concludes are not fully qualified to perform the duties of all its various positions, and thereby violates the Due Process and Equal Protection Clauses to the Fourteenth Amendment to the United States Constitution;

D. Whether the Transit Authority's policy of excluding from employment all persons participating in duly licensed and authorized methadone maintenance programs, constitutes a racially discriminatory employment criterion which has not been and cannot be demonstrated by the Transit Authority to be necessary to the safe and proper conduct of its business, and thereby violates the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution.

E. Whether the Transit Authority's policy of excluding from employment all persons participating in duly licensed and authorized methadone maintenance programs, burdens and impedes participation in such programs, in derogation of rights recognized by statutes and regulations of the United States.

F. What relief would be appropriate on behalf of the class.

PARTIES

14. Plaintiff CARL A. BEAZER, a black, resides at 1074 Summit Avenue, Bronx, New York. He was hired by the Transit Authority in May 1960. He was dismissed by the Transit Authority on August 15, 1972, solely because of his participation in a duly licensed and authorized methadone maintenance program.

15. Plaintiff JOSE R. REYES, an Hispanic, resides at 12-11 31st Avenue, Astoria, New York. He was hired by the Transit Authority in April 1968. He was dismissed by the Transit Authority on September 29, 1972, solely because of his participation in a duly licensed and authorized methadone maintenance program.

16. Plaintiff FRANCISCO DIAZ, an Hispanic, resides at 3865 Baychester Avenue, Bronx, New York. He passed the examination for the position of Maintainer's Helper with the Transit Authority administered in or about February of 1970. At his preappointment medical examination he was found medically disqualified, and he was denied employment with the Transit Authority, on September 23, 1970, and continues to be excluded from such employment, solely because of his participation in a duly licensed and authorized methadone maintenance program.

17. Defendant TRANSIT AUTHORITY exists pursuant to the laws of the State of New York (N.Y. Pub. Auth. Law § 1201(1)), and is declared by law to be a body corporate performing a governmental function (N.Y. Pub. Auth. Law § 1201(1) and § 1202(2)). It has as its purpose, inter alia, the operation of the New York City subway system (N.Y. Pub. Auth. Law § 1202(1)). In furtherance of that purpose it employs approximately 42,000 - 43,000 persons.

18. Defendant WILLIAM J. RONAN is a member of the Transit Authority and serves as its chairman. He also serves as the Transit Authority's chief executive officer and is responsible, inter alia, for the appointment, discipline and removal of the Transit Authority's employees (N.Y. Pub. Auth. Law § 1202(2)).

19. Defendants WILLIAM L. BUTCHER, LAWRENCE R. BAILEY, HAROLD L. FISHER, WILLIAM A. SHEA, EBEN W. PYNE, LEONARD BRAUN, JUSTINE N. FELDMAN, DONALD H. ELLIOTT, FREDERIC B. POWERS and MORTIMER GLEESON are all members of the Transit Authority. Together with defendant Ronan they constitute the Transit Authority's entire membership.

20. Defendant WILBUR B. McLAREN is the executive officer in charge of labor relations and personnel for the Transit Authority, and defendant LOUIS LANZETTA is its medical director.

21. Defendant NEW YORK CITY CIVIL SERVICE COMMISSION is responsible for promulgating rules governing the appointment, promotion and continuance of employment of all employees of the New York City Transit Authority (N.Y. Pub. Auth. Law § 1210(2)).

22. Defendant NEW YORK CITY DEPARTMENT OF PERSONNEL applies medical standards to applicants for employment with the New York City Transit Authority.

23. Defendant HARRY I. BRONSTEIN serves as a member and as chairman of the Civil Service Commission, and as director of the Personnel Department.

24. Defendants DAVID STADTMAUER and JAMES W. SMITH are members of the Civil Service Commission. Together with defendant Bronstein they constitute the Civil Service Commission's entire membership.

FACTUAL ALLEGATIONS

The Transit Authority Policy

25. The Transit Authority maintains an absolute policy against the employment, in any capacity, of persons participating in methadone maintenance programs, without regard to an individual participant's ability to perform as demonstrated by his performance on-the-job with the Transit Authority or elsewhere, his record of adherence to the requirements of the methadone maintenance program in which he is participating, or any other relevant criterion.

26. This policy is enforced by means of a program initiated in or about March 1970, for the purpose of screening out drug users, under which medical examinations, including urinalysis, are administered on a periodic basis to most Transit Authority employees, and are administered to applicants for employment prior to appointment.

27. Execution of this policy resulted in the dismissal of plaintiff Beazer from employment with the Transit Authority.

A. Plaintiff Beazer was employed by the Transit Authority for eleven years, prior to his dismissal. During that period he demonstrated his ability to perform the duties of a variety of Transit Authority positions in a superior manner. He received a number of promotions, each of which was based on an assessment of his record, together with his performance on written and practical examinations designed to

test a candidate's ability to perform the duties of the position being tested for. Through this process he was promoted from the position of car cleaner to conductor and, on May 15, 1966, to towerman. His performance as a towerman resulted in his being assigned the task of training many new employees.

B. In late April of 1971, plaintiff Beazer voluntarily entered the Methadone Maintenance Treatment Program administered by the United States Veterans Administration Hospital located in Manhattan. While participating in this program he continued to perform the duties of his position as towerman in a fully satisfactory manner, from approximately mid-July, 1971, until he was suspended on or about September 1, 1971.

C. On or about August 31, 1971, the Transit Authority received records from the Veterans Administration Hospital, in response to its request, indicating that plaintiff Beazer had been receiving methadone maintenance treatment, as a result of which he was immediately suspended from employment, and on October 4, 1971, charged with violating a Transit Authority regulation prohibiting the use of drugs. The charges specifically accused him of being "on a drug treatment program."

D. A hearing on these charges was conducted on November 3, and November 22, 1971. During the hearing the Transit Authority conceded that it maintained an absolute policy requiring dismissal of and denial of employment to, methadone maintenance program participants. Beazer conceded the charge that he was on a methadone maintenance program,

but contended that that alone should not justify his dismissal. A specific request was made that if it was determined some disciplinary action was warranted, he be transferred from his job as towerman to a less critical job. On November 26, 1971, the Hearing Referee recommended that the charges be sustained and that Beazer be dismissed, effective November 26, 1971.

E. On June 29, 1972, the Impartial Disciplinary Review Board of the Transit Authority recommended that the Hearing Referees's recommendation be sustained. The Board noted that Beazer "has done his job well and has received a relatively few cautions and warnings for the time that he has been employed." It noted further that "from all of the evidence presented, it would appear that Mr. Beazer had handled his job competently while participating in the methadone maintenance program." The Board made its recommendation solely on the basis of findings that Beazer had in fact violated the rule prohibiting the use of drugs by reason of his participation in a methadone maintenance program. The Board urged the Transit Authority to reconsider its rules relating to drug users:

> "to determine to what extent, if any, they should be revised in the light of modern medical and scientific advances in the treatment of drug usage. Moreover, it is the recommendation of this Board, that if it is found that an employee using methadone can work in some capacity for the Authority, the Authority take whatever steps that are necessary to reemploy Carl A. Beazer."

F. On August 15, 1972, the Transit Authority, without issuing an opinion or giving any reasons for its ruling, adopted the recommendations made in the disciplinary procedure, and dismissed Beazer from employment, effective November 26, 1971.

G. Plaintiff Beazer has had an excellent record in the Veterans Administration Methadone Maintenance Treatment Program from the time he entered, in April of 1971, to date. The Hearing Referee noted in his opinion that "credible evidence" had been presented:

> "that he has never missed coming in and picking up his methadone, and that he is known to be complying with the program because urine samples are taken twice a week and tested.
>
> "It therefore must be concluded that Respondent [Beazer] is adhering to the program. He was described as an 'excellent patient.'"

H. Following Beazer's suspension by the Transit Authority, he was employed by the Veterans Administration in their drug detoxification program as a rehabilitation technician counselor.

28. Execution of the Transit Authority's policy against the employment, in any capacity, of persons participating in methadone maintenance programs, resulted in the dismissal of plaintiff Reyes.

A. Plaintiff Reyes was employed by the Transit Authority for almost four years, prior to his dismissal. During that period he demonstrated his ability to perform the duties of different positions with the Transit Authority in a superior manner. During his period of employment with the Transit Authority he was promoted from the position of Maintainers' Helper to Ventilation and Drainage Maintainer. This promotion was based on an assessment of his record, together with his performance on written and practical examinations designed to test a candidate's ability to perform

the duties of the position being tested for. From approximately May 1, 1969, he was responsible for the training and supervision of numerous apprentices.

B. On or about March 1, 1970, plaintiff Reyes voluntarily entered the Beth-Israel Methadone Maintenance Treatment Program, at the St. Claire Hospital. He continued to perform the duties of his position as Ventilation and Drainage Maintainer in a fully satisfactory manner for a period of over one and one-half years, until on or about November 1, 1971, when he was suspended from employment.

C. As a result of a medical examination, conducted on November 1, 1971, the Medical Director of the Transit Authority, defendant Lanzetta, discovered that plaintiff Reyes had been receiving methadone maintenance treatment, and told Reyes at that time that he was being suspended because of his participation in methadone maintenance treatment. He was suspended effective immediately, and on December 13, 1971, was charged with violating a Transit Authority regulation prohibiting the use of drugs.

D. A hearing on these charges was conducted on January 19, 1972. During the hearing the Transit Authority's absolute policy against the employment of methadone maintenance program participants was confirmed. The Medical Director of the Transit Authority, defendant Lanzetta, testified that he never gave, and it was his policy not to give, permission to Transit Authority employees to participate in methadone maintenance programs under any circumstances.

And the Hearing Referee noted that the Transit Authority's "policy of not permitting employees who are under methadone treatment to remain in the system" had been established. Reyes conceded the charge that he was on a methadone maintenance program, but contended that that alone should not justify his dismissal. There was testimony that scientific tests administered to Reyes by a recognized expert demonstrated that Reyes' psychomotor performance while maintained on methadone, as determined by tests of his rotary pursuit skills and reaction times, was normal or above normal, as was his intellectual performance. On January 21, 1972, the Hearing Referee recommended that the charges be sustained and that Reyes be dismissed.

E. On September 29, 1972, the Transit Authority, without issuing an opinion or giving any reasons for its ruling, sustained the charges and dismissed Reyes from employment, effective January 20, 1972.

F. Plaintiff Reyes has had an excellent record in the Beth-Israel Methadone Maintenance Treatment Program at the St. Claire Hospital from the time he entered, in March of 1970, to date. There was testimony at his hearing by the Medical Director of the St. Claire program that he had an excellent record, had never failed to come in to get his methadone as scheduled, and did not use drugs other than methadone.

G. He has been employed by the Mt. Sinae Methadone Maintenance Treatment Program as a social health advocate from January 17, 1972, to date.

29. Execution of the Transit Authority's policy against the employment, in any capacity, of persons participating in methadone maintenance programs, resulted in the denial of such employment to plaintiff Diaz.

A. Plaintiff Diaz has been employed as a sheet-metal mechanic with the same employer since approximately March 1962, a period of almost eleven years. He has participated in the Bernstein Institute Methadone Maintenance Treatment Program of the Beth-Israel Medical Center since November of 1969, a period of approximately three years. Throughout his period of employment he has demonstrated his ability to perform in a superior manner. His fellow workers have elected him union shop steward for the last eight years, in recognition of his leadership abilities.

B. In or about February of 1970, plaintiff Diaz took the examination for the position of Maintainer's Helper with the Transit Authority, which he passed. At the preappointment medical examination, on or about June 5, 1970, he revealed the fact that he was a methadone maintenance program participant, and submitted letters from Dr. Harold L. Trigg, Chief of the Methadone Maintenance Service, Associate Director of Psychiatry, and Associate Director of the Bernstein Institute, Beth-Israel Medical Center, and from a staff medical doctor. These letters testified to his excellent record in the Beth-Israel Program, and specifically noted that he had been totally free of illicit drug use throughout his period of participation in the program. After having successfully completed all aspects of the medical examination, he was told that he was disqualified because methadone program participants were not accepted for employment with the Transit Authority.

C. Diaz appealed his "medical disqualification" to the Transit Authority and was notified that he did not meet the requirements as established by the Transit Authority and the Personnel Department. His subsequent appeal to the City Civil Service Commission was denied without opinion on September 23, 1970.

30. Plaintiff Diaz has had an excellent record of participation in the Beth-Israel Methadone Maintenance Treatment Program from the time he entered, in November of 1969, to date.

31. The present "Medical Standards and Regulations For All Operations and Maintenance Positions" with the Transit Authority, proposed by the Transit Authority and issued May 7, 1971 by the City Civil Service Commission, provide that at the pre-appointment medical examination a candidate will be disqualified for appointment if his urinalysis reveals the presence of "unauthorized" substances, and if "drug addiction or drug abuse" are determined. The Transit Authority and the Civil Service Commission define these terms to include methadone maintenance. These standards govern 53 classes of positions, and 81 per annum positions, covering approximately 35,000 - 36,000 Transit Authority employees. Positions governed include, for example, the following: Bus Maintainer, Car Cleaner, Car Inspector, Car Maintainer, Collecting Agent, Light Maintainer, Maintainer's Helper, Railroad Clerk, Railroad Porter, Telephone Maintainer, Turnstile Maintainer, Ventilage and Drainage Maintainer.

The Transit Authority Policy Was Adopted Without Adequate Grounds for Concluding It Was Reasonable or Necessary

32. The Transit Authority adopted its absolute policy against the employment of methadone maintenance program participants, without having had any rational grounds for concluding that a person is not qualified satisfactorily to perform the duties of a Transit Authority employee, in any capacity, solely by virtue of his participation in such a program.

33. The Transit Authority made no effort to analyze the requirements of the many jobs to which its employees may be assigned, in order to determine the relevance of a person's participation in a methadone maintenance program to his ability to perform the various different kinds of jobs.

34. The Transit Authority made no effort to assess the performance of Transit Authority employees participating in methadone maintenance programs, and had no evidence that such employees were failing to perform the duties of their positions satisfactorily, or were not qualified to perform satisfactorily the duties of other positions within the Transit Authority, prior to instituting the policy requiring their discharge and prohibiting the employment of any other such persons.

35. The Transit Authority had no reliable data relating to the characteristics of participants in duly licensed and authorized methadone maintenance programs indicating that a participant would not be able satisfactorily to perform the duties of a Transit Authority employee:

A. The Transit Authority had no reliable data indicating that the taking of methadone pursuant to duly licensed and authorized methadone maintenance programs would

adversely affect any functional capability which might be related to performance of the duties of a Transit Authority employee;

B. The Transit Authority had no reliable data indicating that participants in duly licensed and authorized methadone maintenance programs were more likely to be abusing drugs so as to adversely affect their ability to perform the duties of a Transit Authority employee, than other persons accepted for employment;

36. The Transit Authority, therefore, adopted its absolute policy against the employment of methadone maintenance program participants without having had any reasonable grounds for concluding that said policy was necessary, or indeed that it was rationally related, to the safe and proper conduct of its business.

The Transit Authority Policy Cannot be Justified as Reasonable or Necessary

37. All available reliable data indicate, in fact, that a person's ability satisfactorily to perform the duties of a Transit Authority employee would not be adversely affected solely by virtue of his participation in a duly licensed and authorized methadone maintenance program.

38. Methadone maintenance is a widely recognized, officially sanctioned, and increasingly dominant form of treatment for persons suffering from addiction to heroin. It is designed to prevent such persons from using heroin, and to enable them to work and otherwise lead productive lives in society.

39. Methadone has been under investigation for use in the maintenance treatment of persons addicted to heroin for more than nine years. Methadone maintenance is now a well-established mode of treatment, pursuant to which stabilizing doses of methadone are administered on a daily basis in order to eliminate the addict's psychological and physiological craving for heroin, and to establish a "blockade" shielding the former addict from the mental and physical effects of heroin.

40. After achieving favorable results with experimental programs, New York State became committed to methadone maintenance on a large scale approximately three years ago. In January of 1970, Governor Rockefeller asked the New York State Legislature for millions of dollars to make "outpatient methadone facilities available...in every community with a substantial addiction problem" (Governor's Budget Message, Session Laws of New York 3053 (McKinney's 1970)). Methadone maintenance is now the dominant mode of treatment for heroin addiction in New York. In the New York City area alone, federal, state and local funds support more than twenty separate methadone maintenance programs with approximately 28,000 participants. The number of persons maintained on methadone is continually increasing.

41. The Food and Drug Administration of the United States Department of Health, Education and Welfare, after consultation with numerous professional groups, advisory committees and individual experts, recognized methadone's established value in the maintenance treatment of heroin addiction by proposing on April 5, 1972, that the drug be removed from its experimental classification under existing federal regulations (Proposed 21 C.F.R. § 130.48(b), 37 Fed. Reg. 6940 (1972)). A regulation implementing this recommendation is to be published shortly.

42. Under federal statutes, and both proposed and existing federal regulations, the operations of methadone maintenance programs are strictly controlled, and participation in such programs is carefully monitored. Any person dispensing methadone must register annually with the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, and obtain the approval of the Food and Drug Administration (21 U.S.C. § 822; 21 C.F.R. § 301; 21 U.S.C. § 355; 21 C.F.R. § 130.44; Proposed 21 C.F.R. § 130.48(b), 37 Fed. Reg. 6940 (1972)). Present New York State regulations also require that dispensers of methadone obtain certificates of approval and registration issued by the New York State Department of Health, Bureau of Narcotic Control, pursuant to § 3311 of the New York Public Health Law (10 N.Y.C.R.R. § 80.23). After April 1, 1973, certification under a detailed regulatory scheme established by Title V of the New York Controlled Substances Act will be required of all methadone maintenance programs in the State. Failure to comply with either the state or federal regulatory structure renders the operator of a methadone maintenance program criminally liable.

43. The Food and Drug Administration requires that methadone maintenance program participants be medically tested at least once weekly for evidence of the use of heroin or any other drug clinically indicated (21 C.F.R. § 130.44(c)(6); Proposed 21 C.F.R. § 130.48(b)(2), 37 Fed. Reg. 6942 (1972)).

44. Pursuant to the laws and regulations cited in paras. 41 - 43 above, and their own policies, administrators of methadone maintenance programs in the New York City area have instituted a variety of procedures to ensure that participants take their methadone as prescribed, and to determine whether they take illicit

I suspect that issue of "over-prescribing" by clinics may be relevant. Those clinics give too much to participants who 1) sell extra; or 2) get hooked if they were too much

drugs. These procedures include, inter alia: supervision of the administration of methadone to ensure that it is taken on a regular basis as prescribed; regular urinalysis (at least one weekly) to determine whether the prescribed methadone is being taken and also whether there has been illicit drug use; supervision and monitoring by counsellors and other supportive personnel who are proficient in detecting the symptoms of illicit drug use.

45. The Transit Authority has no comparable procedures to assure itself that its employees are not using illicit drugs. On information and belief it is the Transit Authority's policy at present to test its employees for illicit drug use only approximately once a year, and persons in certain positions of employment with the Transit Authority are apparently never tested.

46. Scientifically designed and administered studies have uniformly found that methadone maintenance has no adverse affect on performance effectiveness. These studies are based on tests of intellectual functioning, and of psychomotor performance as determined by rotary pursuit tests and by visual and auditory reaction-time tests. Studies of the performance of persons in situations requiring both skilled performance and social responsibility also show that methadone maintenance has no adverse effect.

47. The City of New York has recognized both the employability, and the need for employment, of ex-addicts, including ex-addicts participating in methadone maintenance programs. On March 22, 1972, the City's Department of Personnel published a personnel policy and procedure bulletin relating to "City Policy on Employment of Ex-Drug Addicts." It notes that the policy resulted from "an intensive study of the employability of ex-drug addicts."

And it provides that ex-addicts, including specifically those persons participating in methadone maintenance programs, shall not be automatically disqualified from employment in any City position except the uniformed services.

48. The Transit Authority's absolute policy against the employment of methadone maintenance program participants is therefore not necessary, and indeed is not rationally related, to the safe and proper conduct of its business.

The Transit Authority's Policy Discriminates Against Methadone Maintenance Program Participants as Compared to Other Former Heroin Addicts

49. The Transit Authority does not maintain an absolute policy against the employment of former heroin addicts who are not presently using drugs. Instead the Transit Authority makes decisions as to the employment of such persons based on the circumstances of the individual case.

50. There is no reasonable ground for concluding that former heroin addicts presently participating in duly licensed and authorized methadone maintenance programs are less qualified to perform the duties of a Transit Authority employee than all other former heroin addicts, including those participating in drug-free treatment programs.

The Transit Authority's Policy Discriminates Against Methadone Maintenance Program Participants as Compared to Other Groups Which the Authority Concludes Are Not Fully Qualified for All Its Positions

51. The Transit Authority does not maintain an absolute policy requiring the discharge of employees suffering from a variety of medical or other disabilities including alcoholism,

epilepsy, or heart conditions, who are as a result, in the Transit Authority's opinion, not fully qualified to perform the duties of all its various positions. Instead the Transit Authority allows such persons, under certain circumstances, to continue in its employ, limiting them to selected positions where that appears necessary. Thus, for example:

A. Transit Authority employees with three years' seniority who are discovered to be alcoholics are not automatically discharged. Instead they are suspended from duty and provided with an opportunity to attend an alcoholic treatment center pursuant to the Transit Authority s alcoholic treatment program. Upon discharge by the treatment center the alcoholic is allowed to resume work with the Transit Authority in a non-critical position. If he maintains a good record for three subsequent years, he will be eligible for his previous position, even if it is a critical, safety-sensitive position. Approximately 3,000 employees are now participating in the Transit Authority's alcoholism program, receiving treatment and/or counselling.

B. Transit Authority employees with three years' seniority who are discovered to have medical disabilities, such as epilepsy or heart conditions, are placed, whenever possible, in "limited service" positions, rather than being discharged. The Transit Authority now has approximately 1,500 employees in limited service positions.

52. There is no reasonable ground for concluding that methadone maintenance program participants are less qualified to perform the duties of all the various positions within the Transit Authority than employees in the groups referred to in para. 51 above.

The Transit Authority's Policy Has a Racially Discriminatory Impact

53. Statistics available from the United States Department of Commerce, Bureau of the Census indicate that the civilian workforce[2/] for the New York Standard Metropolitan Statistical Area[3/] is approximately 15.0% black and 5.1% Hispanic. The racial composition of this population can be assumed to approximate the racial composition of the population eligible for employment with the Transit Authority save for the latter's policy of excluding all methadone maintenance program participants. The methadone maintenance population, essentially a sub-group of the civilian workforce, is approximately 30.3% black and 19.7% Hispanic.[4/] This data indicates that the probability of a black or Hispanic person being denied employment by the Transit Authority due to his participation in methadone maintenance is substantially and significantly higher than the same probability for his white counterpart.

54. Hence, the Transit Authority's policy of excluding all methadone maintenance program participants from employment has a significant and substantial discriminatory impact upon black and Hispanic persons otherwise eligible for Transit Authority employment.

2/ "Civilian workforce" is defined by the Bureau of the Census to include all non-military persons who are either employed, or looking for and available to accept employment.

3/ "Standard Metropolitan Statistical Area" (SMSA) is a designation utilized by the Bureau of the Census. Counties contiguous to a county or counties containing a city of 50,000 persons or more are included in an SMSA if, according to criteria established by the Bureau of the Census, they are socially and economically integrated with the central city. The New York SMSA includes New York City and Westchester, Rockland, Nassau and Suffolk Counties. It comprises the area from which the Transit Authority can reasonably be expected to draw its 42,000 - 43,000 employees.

4/ Records regarding the ethnic composition of the methadone maintenance population are maintained by the Rockefeller University Methadone Information Center. Under contract to the New York State Narcotic Addiction Control Commission, the center is responsible for gathering extensive information concerning methadone maintenance in the New York City metropolitan area.

The Transit Authority's Policy Burdens and Impedes Participation In Methadone Maintenance Treatment

55. Federal law, and the regulations and policies of various federal governmental agencies, support the right to participate in methadone maintenance treatment. Thus the Drug Abuse Office and Treatment Act of 1972, Public Law 92-255,86 Stat. 65, sect. 101(8), provides that: "Control of drug abuse requires the development of a comprehensive, coordinated long-term federal strategy that encompasses...effective health programs to rehabilitate victims of drug abuse." The federal regulations referred to in paras. 41-43 above provide a regulatory scheme pursuant to which persons can legally be maintained on methadone. Federal agencies provide substantial financial support for the conduct of methadone maintenance programs.

56. Employment is generally recognized to be crucial to the success of a methadone maintenance treatment program. Thus, for example, the "City Policy on Employment of Ex-Drug Addicts" referred to in paran 47 above, states that "the assurance to the addict of a gainful and rewarding employment is an essential motivating force for undertaking and completing treatment for his addictive habit."

57. Methadone maintenance is a treatment modality which may last anywhere from a few years to a lifetime. Employment opportunity for program participants is, therefore, additionally essential.

58. The Transit Authority's policy of excluding from employment all methadone maintenance program participants tends to discourage persons from participating in methadone maintenance

i.e. persons already employed. Who? What extent?

programs, penalizes persons who do participate, and reduces their opportunities for rehabilitation.

VIOLATIONS OF LAW

59. As a result of the defendants' continuing pattern and practice of discrimination, as illustrated by the specific examples of discrimination described above, plaintiffs and the class they represent have been and are being denied employment with the Transit Authority in derogation of their rights under the Fourteenth Amendment to the United States Constitution, and under 42 U.S.C. §§ 1981 and 1983.

60. The Transit Authority's policy of excluding from employment, in any capacity, participants in methadone maintenance programs violates their rights in that:

A. The policy results in the denial of public employment to certain classes of persons without rational justification in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution;

B. The policy has a significant and substantial discriminatory impact on black and Hispanic persons otherwise eligible for Transit Authority employment, and neither has been nor can be justified by the Transit Authority as necessary to the safe and proper conduct of its business, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution;

C. The policy burdens and impedes participation in duly licensed and authorized methadone maintenance programs in derogation of rights recognized by statutes and regulations of the United States.

IRREPARABLE INJURY

61. Plaintiffs and the class they represent have no adequate remedy at law. Plaintiffs have suffered, are suffering, and will continue to suffer irreparable injury as a result of defendants' discriminatory policies and practices unless and until the relief demanded in this complaint is granted.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs individually, and on behalf of all others similarly situated, respectfully pray that this Court:

A. Declare, pursuant to 28 U.S.C. § 2201, that defendants' refusal to employ, in any capacity, all persons participating in duly licensed and authorized methadone maintenance programs is in violation of the laws and the Constitution of the United States;

B. Enjoin defendants, their agents, employees, and all those acting in concert with them, and their successors, from refusing to employ, in any capacity, persons participating in duly licensed and authorized methadone maintenance programs, solely because of such participation;

C. Order that plaintiffs Beazer, Reyes and Diaz, and all other members of the class they represent who were dismissed, or whose applications for employment were denied, solely because of their participation in duly licensed and authorized methadone maintenance programs, be provided

employment with the Transit Authority in positions appropriate to their abilities and experience, together with backpay and other benefits of employment from the date they were unlawfully discharged or denied employment;

D. Retain jurisdiction of this action until such time as the Court can be assured defendants are complying with its order;

E. Award plaintiffs their costs, including disbursements and reasonable attorneys' fees;

F. Grant such other and further relief as may be proper.

DATED: New York, New York
December 15, 1972

Respectfully submitted,

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280-3867

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335 Broadway
New York, New York 10013

Attorneys for Plaintiffs

Answer of Defendant New York City Transit Authority and Related Defendants

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK
- -x

CARL A. BEAZER;

JOSE R. REYES; and

FRANCISCO DIAZ, individually and on behalf of all others similarly situated,

72 Civ. 3307

Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY;

WILLIAM J. RONAN, individually and in his capacity as a member and as Chairman and chief executive officer of the New York City Transit Authority, and his successors in office;

WILLIAM L. BUTCHER, LAWRENCE R. BAILEY, HAROLD L. FISHER, WILLIAM A. SHEA, EBEN W. PYNE, LEONARD BRAUN, JUSTINE N. FELDMAN, DONALD H. ELLIOTT, FREDERIC B. POWERS and MORTIMER GLEESON, individually and in their capacities as members of the New York City Transit Authority, and their successors in office;

WILBUR B. McLAREN, individually and in his capacity as executive officer for labor relations and personnel of the New York City Transit Authority, and his successors in office;

LOUIS LANZETTA, individually and in his capacity as medical director of the New York City Transit Authority, and his successors in office;

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK;

PERSONNEL DEPARTMENT OF THE CITY OF NEW YORK;

HARRY I. BRONSTEIN, individually and in his capacity as a member and as Chairman of the Civil Service Commission of the City of New York, and director of the Personnel Department of the City of New York, and his successors in office;

DAVID STADTMAUER and JAMES W. SMITH, individually and in their capacities as members of the Civil Service Commission of the City of New York, and their successors in office,

Defendants

- -x

ANSWER
OF
DEFENDANTS
NEW YORK CITY
TRANSIT AUTHORITY
et al.

Answer of Defendant New York City Transit Authority

The defendants, New York City Transit Authority, William J. Ronan, William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, William A. Shea, Eben W. Pyne, Leonard Braun, Justin N. Feldman, Donald H. Elliott, Frederic B. Powers, Mortimer Gleeson, Wilbur B. McLaren and Louis Lanzetta, by their attorney John G. de Roos, answering the complaint:

FIRST: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 30, 38, 39, 41, 42, 43, 44, 55, 56 and 57.

SECOND: Deny the allegations of paragraph 14 except (a) admit that the plaintiff Carl A. Beazer is black and was hired by the Transit Authority on May 11, 1960 and dismissed August 15, 1972 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Beazer's residence.

THIRD: Deny the allegations of paragraph 15 except (a) admit that the plaintiff Jose R. Reyes was hired by the Transit Authority on April 29, 1968 and dismissed on September 29, 1972 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Reyes' ethnic background or place of residence.

FOURTH: Deny the allegations of paragraph 16 except (a) admit that the plaintiff Francisco Diaz passed an examination for the position of Maintainer's Helper given by the City Civil Service Commission on or about February 28, 1970, but was medically disqualified for employment with the Transit Authority and denied appointment to such position on June 5, 1970 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Diaz' ethnic background or place of residence.

FIFTH: Deny the allegations of paragraph 22 except admit that the Transit Authority applies to applicants for employment medical standards promulgated by the City Civil Service Commission as proposed to the Commission by the Authority.

SIXTH: Deny the allegations of paragraph 25 except admit that the Transit Authority does not employ persons using narcotic drugs, including methadone, nor does it continue in employment persons violating Rule 11(b) of the Rules and Regulations of the Authority Governing Employees Engaged in the Operation of the New York City Transit System, which rule provides as follows:

> "Employees must not use, or have in their possession, narcotics, tranquilizers, drugs of the Amphetamine group or barbiturate derivatives or paraphernalia used to administer narcotics or barbiturate derivatives, except with the written permission of the Medical Director - Chief Surgeon of the System."

SEVENTH: Deny the allegations of paragraph 26 except admit that the Transit Authority screens applicants for employment for possible drug usage by means of medical examinations, including urinalysis, and, on a periodic basis, similarly screens employees assigned to operating positions.

EIGHTH: Deny the allegations of paragraph 27 except admit that the plaintiff Carl A. Beazer was first employed by the Transit Authority as a Car Cleaner on May 11, 1960, was later promoted to the position of Conductor and on May 15, 1966 promoted to the position of Towerman; that on or about August 31, 1971, the Medical Department of the Authority received a written report from the Veteran's Administration Hospital in New York City indicating, among other things, that Beazer had a 15 year history of drug dependance and was then participating in the hospital's methadone maintenance treatment program;

that he was suspended from duty on September 1, 1971 and on October 4, 1971, pursuant to § 75 of the Civil Service Law of the State of New York, was charged with misconduct for violating the aforesaid Rule 11(b); that a hearing of the charges was conducted on November 3, 22 and 24, 1971, and the Hearing Referee recommended to the Authority that the charges be sustained and that Beazer be dismissed from service effective November 26, 1971; that prior to the Authority's acting upon the recommendation Beazer appealed to the 3-member Impartial Disciplinary Review Board, established pursuant to agreement between the Transit Authority and the Transport Workers' Union of America, Local 100, which is the labor representative for nearly all of the Authority's hourly-paid employees, including employees in the title of Towerman; that the Review Board recommended to the Authority that the recommendation of the Hearing Referee be sustained and on August 15, 1972, the Transit Authority, acting by W.B. McLaren, its Executive Officer for Labor Relations and Personnel, adopted the recommendation of the Hearing Referee and Beazer was dismissed from the Authority's employ effective November 26, 1971. (Exhibit A annexed).

NINTH: Deny the allegations of paragraph 28 except admit that the plaintiff Jose R. Reyes was first employed by the Transit Authority as a Maintainer's Helper on April 29, 1968 and was promoted to the position of Maintainer (Ventilation and Drainage) on July 5, 1970; that on November 1, 1971, Reyes was medically examined and screened for narcotic use resulting in medical findings of such usage; that he was suspended from duty on November 8, 1971 and on or about December 13, 1971 was charged with misconduct for using heroin and methadone in

violation of the aforesaid Rule 11(b); that a hearing was held on January 19, 1972 and on or about January 21, 1972, the Hearing Referee recommended to the Authority that the charge be sustained and Reyes dismissed from service effective January 20, 1972; that the Authority by its Executive Officer, W. B. McLaren, approved the recommendation on September 29, 1972. (Exhibit B annexed).

TENTH: Deny the allegations of paragraph 29 except admit that the plaintiff Francisco Diaz passed an examination for the position of Maintainer's Helper given by the City Civil Service on February 28, 1970; that he was denied appointment to such position by the Authority upon medical findings of narcotic drug use; that Diaz appealed from such denial to the City Civil Service Commission which denied his appeal on September 23, 1970.

ELEVENTH: Deny the allegations of paragraph 31 except admit that on or about May 7, 1971 the City Civil Service Commission promulgated "Medical Standards and Regulations for all Operations and Maintainence Positions, New York City Transit Authority", as proposed by the Authority, and the Court is respectfully referred to such document for its substantive provisions and the scope of its application.

TWELFTH: Deny the allegations of paragraphs 32, 33, 34, 35, 36, 37, 46, 48, 49, 50, 52, 53, 54, 58, 59, 60 and 61.

THIRTEENTH: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 except they admit that methadone maintainence is one of several modalities of treatment for narcotic addiction.

FOURTEENTH: Deny the allegations of paragraph 45 except admit that pursuant to Rule 31 of the Rules and Regulations Governing Employees Engaged in the Operation of the New York City Transit System, all persons, before they are appointed or promoted to positions within the Authority, are required to submit to medical examinations to determine their medical fitness to perform the duties of the positions sought; that certain categories of operating employees are periodically examined to determine their medical fitness to perform the duties of the positions held by them, and at any time the medical director of the Transit Authority or other department head may order or require an individual employee to submit to a medical examination if in his opinion such examination is indicated.

FIFTEENTH: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 except admit that on or about March 22, 1972, the Department of Personnel of the City of New York published a document entitled "Personnel Policy and Procedure Bulletin" relating to city policy on the employment of ex-drug addicts, but that such policy and procedure are not applicable to the defendant Transit Authority.

SIXTEENTH: Deny the allegations of paragraph 51 except admit that under rules, regulations and working conditions of the Authority a permanent employee who has a specified minimum period of service and is medically found to be permanently disqualified from performing the full duties of his position because of a non-service connected disability may, in the discretion of the Authority, be assigned to other work provided he is qualified therefor

and such work is available, and an employee who is disabled from performing the duties of his position as a result of alcoholism may, instead of being dismissed on disciplinary charges, and depending on the employee's length of service, be invited to accept a program of counselling and therapy provided by the Authority, the charges being held in abeyance pending the outcome of such counselling.

WHEREFORE, the defendants, New York City Transit Authority, William J. Ronan, William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, William A. Shea, Eben W. Pyne, Leonard Braun, Justin N. Feldman, Donald H. Elliott, Frederic B. Powers, Mortimer Gleeson, Wilbur B. McLaren and Louis Lanzetta, demand judgment dismissing the complaint.

JOHN G. de ROOS
Attorney for Defendants,
New York City Transit Authority, et al.
Office & P. O. Address
370 Jay Street
Brooklyn, N. Y. 11201
212 - 852-5000

Dated: May 31, 1973

Answer of Defendant Civil Service Commission and Related Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

CARL A. BEAZER;

JOSE R. REYES; and

FRANCISCO DIAZ, individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY;

WILLIAM J. RONAN, individually and in his capacity as a member and as Chairman and chief executive officer of the New York City Transit Authority, and his successors in office;

WILLIAM L. BUTCHER, LAWRENCE R. BAILEY, HAROLD L. FISHER, WILLIAM A. SHEA, EBEN W. PYNE, LEONARD BRAUN, JUSTINE N. FELDMAN, DONALD H. ELLIOTT, FREDERIC B. POWERS and MORTIMER GLEESON, individually and in their capacities as members of the New York City Transit Authority, and their successors in office;

WILBUR B. McLAREN, individually and in his capacity as executive officer for labor relations and personnel of the New York City Transit Authority, and his successors in office;

LOUIS LANZETTA, individually and in his capacity as medical director of the New York City Transit Authority, and his successors in office;

CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK;

PERSONNEL DEPARTMENT OF THE CITY OF NEW YORK;

HARRY I. BRONSTEIN, individually and in his capacity as a member and as Chairman of the Civil Service Commission of the City of New York, and director of the Personnel Department of the City of New York, and his successors in office;

ANSWER

72 Civ. 5307

(Griesa, J.)

DAVID STADTMAUER and JAMES W. SMITH, individually and in their capacities as members of the Civil Service Commission of the City of New York, and their successors in office,

Defendants.

----------x

Defendants CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, PERSONNEL DEPARTMENT OF THE CITY OF NEW YORK, HARRY I. BRONSTEIN, DAVID STADTMAUER and JAMES W. SMITH, by their attorney, NORMAN REDLICH, Corporation Counsel of the City of New York, answering the complaint herein, allege:

1. They lack knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs "1", "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "25", "26" and "30" of the Complaint. 14-24 - parties

2. With respect to paragraphs "14", "15" and "16" of the Complaint, they lack sufficient knowledge or information to form a belief (a) as to the racial or ethnic background of the plaintiffs, and (b) as to whether they were excluded from employment with defendant New York City Transit Authority (hereinafter "NYCTA") solely by reason of their participation in methadone maintenance treatment programs.

3. They lack knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs "27" and "28" of the Complaint except admit that plaintiffs BEAZER and REYES were at one time employed by defendant NEW YORK CITY TRANSIT AUTHORITY (hereinafter "NYCTA") and were dismissed on charges of drug use.

4. They lack knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "29" of the complaint except admit that plaintiff DIAZ took an examination for a position with defendant NYCTA, that he passed said examination, that he was medically disqualified by defendant NYCTA from employment with that agency, that he appealed the disqualification to the defendant City CIVIL SERVICE COMMISSION, and that the appeal was denied on or about September 23, 1970.

5. They deny so much of paragraph "31" of the Complaint as alleges or implies that the defendant CIVIL SERVICE COMMISSION requires disqualification of candidates for employment solely by reason of methadone maintenance treatment.

6. They lack knowledge or information sufficient to form a belief with respect to the truth of each and every allegation set forth in paragraphs "32", "33", "34", "35", "36" and "37" of the Complaint.

7. They lack knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraph "41" of the Complaint, except admit that the FDA has published the proposed regulation cited therein.

8. They deny each and every allegation set forth in paragraphs "42", "43" and "55" of the Complaint and respectfully refer the Court to the provisions cited therein for the full force and effect thereof.

9. With respect to paragraph "44" of the Complaint they lack knowledge or information sufficient to form a belief as to the exact policies and procedures in effect in all of the methadone maintenance clinics operating in the City of New York.

10. They lack knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth in paragraphs "45", "46", "48", "50", "51", "52", "53", "54", "58", "59", "60" and "61" of the Complaint.

WHEREFORE, defendants CIVIL SERVICE COMMISSION OF THE CITY OF NEW YORK, PERSONNEL DEPARTMENT OF THE CITY OF NEW YORK, HARRY I. BRONSTEIN, DAVID STADTMAUER and JAMES W. SMITH respectfully request judgment dismissing this action as against them.

NORMAN REDLICH
Corporation Counsel
Attorney for Defendants
CIVIL SERVICE COMMISSION OF
THE CITY OF NEW YORK, PERSONNEL
DEPARTMENT OF THE CITY OF
NEW YORK, HARRY I. BRONSTEIN,
DAVID STADTMAUER
and JAMES W. SMITH.

By Victor P. Muskin

Victor P. Muskin
Assistant Corporation Counsel
Office and P.O. Address:
Municipal Building
New York, N.Y. 10007
Tel. 566-2503

Dated: March 20, 1973.

Affidavit of Eleanor Holmes Norton in Opposition to Defendant Transit Authority's Motion to Dismiss

- X

CARL A. BRAGER, et al., :

Plaintiffs, :

-against- :

NEW YORK CITY TRANSIT AUTHORITY, et al., :

Defendants. :

- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

AFFIDAVIT

ELEANOR HOLMES NORTON, being duly sworn, deposes and says:

1. I am the Chairman of the Commission on Human Rights of the City of New York. I submit this affidavit in support of plaintiffs' response to defendant Transit Authority's [hereinafter "T.A."] motion to dismiss in the above captioned action.

2. As Chairman I presided throughout the public hearings held by the Commission on January 8-10, 1973, on "Employment Problems of the Rehabilitated Drug Addict."

3. I have read the complaint filed in the above-captioned action, and the affidavit and memorandum filed by defendant T.A. in support of its motion to dismiss. That affidavit mentions the Commission hearings; and the memorandum purports to quote from statements made by me at the opening of the hearings, and implies that those statements indicate that I believe methadone maintenance program participants represent an inherently higher risk to employers than other potential employees (T.A. memorandum p. 7).

4. This implication is entirely unwarranted. It is not supported by any statements I made at the hearings. Indeed, at the opening of the hearings I stated that their purpose was to focus on "sane, strong, short-term ways to fight addiction," and to "focus on one immediately available remedy, a job for the rehabilitated addict." I referred to employment as "perhaps the single most important element of rehabilitating the ex-addict to a life-long commitment against drugs," and argued that if rehabilitation "has not worked, it has been in large part because the

rehabilitated addict has found an extreme scarcity of places in society to which to return as a law-abiding, productive citizen" (Hearing transcript, January 8, 1973, p. 5)

5. Moreover, the testimony received at the hearings indicated that there are no reliable data indicating, and no rational grounds for assuming, that a person who is participating in a methadone maintenance program is, by virtue of that participation less qualified for employment by the T.A. than other potential or actual T.A. employees.

6. Indeed, the testimony clearly revealed that neither past heroin use nor current methadone maintenance adversely affect a person's ability to perform either work related or other functions. Dr. Norman Gordon, Professor at Yeshiva University, reported that performance on the Wechsler Adult Intelligence Scale by methadone maintenance treatment program participants was equal to or better than the general population, with the lower I.Q. ranges absent. (Hearing transcript, January 8, 1973, p. 75) Dr. Gordon also summarized the results of his well known studies on the psychomotor performance of methadone maintenance treatment program participants, with this unequivocal statement:

> "And I repeat again that we have found, at least from a performance potential point of view, no reason and no evidence that there is any impairment in the ability to function of the methadone-maintained person who follows the regimen of treatment as prescribed." (Hearing transcript, January 8, 1973, p. 88)

Dr. Vincent Dole, a Rockefeller University Professor, and one of the pioneers in the development of methadone maintenance testified that: "Once the addict is chemically rehabilitated through the use of [methadone maintenance treatment programs], the subject is equal in a functional sense." (Hearing transcript, January 9, 1973, p. 8). And Dr. Fred Benjamin, Senior Research Physiologist,

Research Institute, National Highway Traffic Safety Administration, United States Department of Transportation, testified to studies comparing driving performance of methadone users with a control group, that with respect to comparative accident rates they did "not find any significant difference between the drug users and the controls" (p. 75, Vol. II) and therefore concluded "I don't think there is any justification as far as driving is concerned to discriminate in any way between methadone users and controls." (p. 79, Vol. II). Numerous employers testified to their successful experiences in the employment of methadone maintenance patients including, e.g., Howard Samuels, Chairman, Off-Track Betting Corporation; Jerome Kretchmer, Administration, New York City Environmental Protection Administration; Dr. Edward Kaufman, Director of Psychiatry, Prison Health Service, New York City Health Services Administration; James P. Redmond, Personnel Director, New York City Finance Administration; Daniel Armet, Assistant Commissioner for Special Programs, New York City Health Services Administration; Joseph Giglio, Vice President for Systems and Corrections, New York City Health and Hospitals Corporation; Alfred Maevis, Commissioner, New York City Department of Public Works; Joseph J. Famularo, Vice President of Personnel, McGraw-Hill, Inc.; Aaron S. Sadove, Vice President, Employee Relations, Consolidated Edison Company of New York; and Dr. G. H. Collins, Medical Director, New York Telephone Company. Sadove testified that Con Ed has many sensitive positions but aside from nuclear power plants, where AEC regualtions exclude them, there are no categorical restrictions of methadone maintained persons from any positions. He stated that the retention rate of methadone maintenance participants is about the same as for Con Ed employees hired from the general population. (Hearing transcript, January 10, 1973, pp. 81-82, 90) Collins stated that it was the New York Telephone Company's policy that if satisfactory and permanent rehabilitation were demonstrated job "applicants [maintained on methadone] are considered on an equal basis with others for what ever employment opportunities exist." He noted the sensitive natur of many telephone company positions and plainly stated that there no disqualification of ex-heroin addicts from any job. (Hearing

transcript, January 10, 1973, pp. 130-35)

7. The testimony further indicated that there is no basis for assuming that alcoholics and ex-addicts not on methadone will perform more satisfactorily as employees than methadone maintenance participants. Thus, Dr. Henry Brill, Director of Pilgrim State Hospital and Chairman of the Methadone Maintenance Program Evaluation Committee at the Columbia School of Public Health, testified:

> "The individual who is on Methadone is not disabled physically, that is he is not like somebody whose maintenance does have alcohol, there is no discoordination, no slurring of speech, no obvious incapacity; he looks like anybody else; he can drive a car; he can do anything that other people can do." (Hearing transcript, January 9, 1973, p. 37)

Aaron S. Sadove of Con Edison testified that his company had had better experience with methadone maintained ex-addicts than with ex-addicts who were "drug-free." (Hearing transcript, January 10, 1973, pp. 77-78)

8. The testimony further indicated that an employment policy which excludes ex-addicts -- or a sub-class of ex-addicts comprised of all methadone maintenance treatment program participants -- has a racially discriminatory impact. (Hearing transcript, p. 139)

9. The testimony further indicated that the success of methadone maintenance, the major treatment modality for heroin addiction in the New York City area, ultimately depends upon the availability of adequate employment opportunities for methadone maintenance participants. Ira Jay Marion, Director of Education of the Drug Abuse Service of Albert Einstein College of Medicine, noted that "some 30 million dollars is being spent for methadone maintenance in New York State alone. Without cooperation of the business community the term 'rehabilitation' becomes only semantical and funding becomes failure." (Hearing transcript, January 8, 1973, p. 140) Harry I. Bronstein, Chairman of the

City's Civil Service Commission and Director of its Personnel Department, - ironically, a defendant in the above captioned action - stated his view that public employers should lead the way in employing ex-addicts:

> "The public service and private industry have an obligation to provide employment opportunities to these ex-addicts if the spread of their disease is to be stopped. Public service, and the City government in particular, must take a leading role in opening up employment opportunities to the former addicts. An example should be set for private industry to follow where it is not now employing such persons." (Hearing transcript, January 9, 1973, p. 99)

Eleanor Holmes Norton

Eleanor Holmes Norton

Sworn to before me
this 5 day of
April, 1973.

Notary Public

E. JOYCE LIECHENSTEIN
COMMISSIONER OF DEEDS
CITY OF NEW YORK 1-964
Certificate filed in New York County
Commission Expires May 1, 1973

Papers Relating to Proposed Stay of Proceedings

LETTER DATED JULY 20, 1973 TO COURT
FROM ELIZABETH B. DuBOIS

LEGAL ACTION CENTER
OF THE CITY OF NEW YORK

271 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 679-6502

001-01
#21.

July 20, 1973

Board of Directors
ARTHUR L. LIMAN, *chairman*
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Staff
ELIZABETH B. DuBOIS
ERIC D. BALBER
MARK C. MORRIL
MICHAEL F. SMITH

The Honorable Thomas P. Griesa
United States District Court
for the Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Beazer, et al., v. New York City Transit Authority, et al., 72 Civ. 5307

Dear Judge Griesa:

As you know, at the July 5th conference between the parties and this Court, the City defendants indicated that they were in the process of developing a plan for the review of medical standards for employment in all Transit Authority positions. You suggested that the City file an affidavit describing its plan, and that the Transit Authority submit some indication of what it would be prepared to stipulate to respecting that plan.

You further indicated that you hoped the City's plan would provide a basis for agreement by the parties to stay the proceedings in this case, since it appeared that the City's proposed study constituted the kind of relief that would be appropriate should the plaintiffs prevail at a trial on the merits.

Accordingly, plaintiffs' counsel initiated discussions immediately after the July 5th conference with representatives of both the City defendants and the Transit Authority in an attempt to reach agreement upon a plan that would provide adequate protection for plaintiffs and their class, in exchange for staying their right to proceed to trial.

Letter dated July 20, 1973 to Court from Elizabeth B. DuBois

Those discussions, detailed in the affidavit submitted herewith, have made it clear that the defendants are unwilling to reach such agreement. The City's proposed plan postpones any possibility of relief for two years. Moreover, the Transit Authority has refused to make any commitments to modify its policy and to provide for the employment of plaintiffs and their class in accordance with the results of that plan. Since the City defendants have made it clear they do not have the power actually to provide plaintiffs with the relief to which they claim a right in this action, it is clear that plaintiffs' cause would in no way be advanced by simply awaiting the completion of the City's study.

Since the City's proposed plan is in no way comparable to the relief to which plaintiffs would be entitled if they prevailed at a trial on the merits, it provides no basis for interfering with plaintiffs' normal rights to proceed with their lawsuit. See generally Kaufman v. Jeffords, 268 F. Supp. 784, 785 (S.D.N.Y. 1967); Landis v. North American Co., 299 U.S. 248, 254-55 (1936); Ferguson v. Tabah, 288 F. 2d 665, 672 (2d Cir. 1962); Mottolese v. Kaufman, 176 F. 2d 301, 303 (2d Cir. 1949); Nederlandse Erts - Tankersmaatschappij v. Isbrandsten Co., 339 F. 2d 440, 441-2 (2d Cir. 1964); Levy v. Alexander, 170 F. Supp. 439, 441 (E.D.N.Y. 1959). Any order staying the action would have to include the provisions discussed in paras. 11(a)-(f) of the affidavit filed herewith, in order adequately to protect the rights of plaintiffs and their class.

Finally, the suggestion made by counsel for the Transit Authority in its letter to the Court dated July 11, 1973, that plaintiffs' motion to add a named plaintiff should be stayed, must be rejected as frivolous. Whatever determination may be made with respect to a stay of the proceedings, that determination cannot preclude Mr. Frasier's right to participate in the lawsuit. Moreover, as the papers filed in support of plaintiffs' motion indicate, its denial would be pointless, since Mr. Frasier has a clear right either to intervene or to file an independent proceeding.

Sincerely,

Elizabeth B. DuBois

Elizabeth B. DuBois
Attorney for plaintiffs

EBDB:MR

cc: John G. deRoos
Norman Redlich
John O'Donnell

AFFIDAVIT OF ELIZABETH B. DuBOIS,
DATED JULY 20, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER; JOSE R. REYES; and FRANCISCO DIAZ, individually and on behalf of all others similarly situated, Plaintiffs,	72 Civ. 5307 (T.P.G.)
-against-	
NEW YORK CITY TRANSIT AUTHORITY, et al., Defendants.	AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ELIZABETH B. DuBOIS, being duly sworn, deposes and says:

1. I am one of counsel to plaintiffs, including prospective plaintiff Malcolm K. Frasier, and am fully familiar with all prior proceedings in the above captioned action.

Meeting with City Defendants' Representatives July 9, 1973 - City Plan as then Formulated

2. Immediately after the conference between the parties and this Court on July 5, 1973, plaintiffs' counsel arranged to meet on Monday, July 9th with representatives of the City defendants* to discuss the City's plan. At that meeting William Roskin, counsel for the City defendants, stated that under the plan as then formulated, the medical standards for each Transit Authority position would be re-evaluated and, where appropriate, revised to

* The term "City defendants" as used herein includes the City Civil Service Commission and its members, and the Department of Personnel and its Director.

make methadone maintained persons eligible, prior to the administration of the next civil service examination for that position.

3. Mr. Roskin further indicated that the positions for which the named plaintiffs had previously passed civil service examinations could be scheduled for re-evaluation in the early months of the study, and that the City defendants would be agreeable to the appointment and/or reinstatement of the named plaintiffs to those positions if they were eligible under the newly developed medical standards. However, he made it clear that such reinstatements and appointments could not take place without the agreement of the TA.*

4. Mr. Roskin said that under the plan as then formulated, a panel of two doctors, one selected by the TA and one selected by the City defendants, would be primarily responsible for making recommendations to the Civil Service Commission with respect to new medical standards. Plaintiffs' counsel asked: (a) to be allowed to select a doctor to sit on this panel; and (b) to be consulted before any final decisions were made as to the membership of this panel. We also offered to submit a list of experts in the field of methadone maintenance for the City's consideration. By letter of July 13, 1973 to Defendant Bronstein, Chairman of the Commission (annexed hereto as Exhibit A), plaintiffs counsel reiterated those requests, and submitted the proposed list of experts (annexed hereto as Exhibit B).

* The term "TA" as used herein includes the Transit Authority and its Chairman, members and officers named in the instant action.

5. In response to our inquiry as to why the City plan as then formulated covered only Operations and Maintenance positions in the TA, and not clerical and other similar administrative positions, Mr. Roskin stated that positions in the TA outside of the Operations and Maintenance area were covered by City-wide Civil Service employment titles -- the medical standards for which were established on a City-wide basis. He indicated that it was his understanding that methadone maintained persons were eligible for these titles with respect to all public agencies other than the TA, and that he would look into the question of their eligibility for TA positions, and the related question of whether these positions whould also be covered by the City's study. In response to plaintiffs' request for a copy of the medical standards applicable to these positions, plaintiffs subsequently received from Mr. d'Ambrose, the Deputy Personnel Director, a copy of the medical standards (attached hereto as Exhibit C) which plaintiffs are informed apply to virtually all of these positions, and which provide that a history of drug use may not be used as a basis for rejection if the eligible "is successfully participating in a recognized chemotherapeutic program or has satisfactorily completed any other acceptable program and is drug-free."

Meeting with Transit Authority Representatives July 11, 1973 - TA Position

6. Since on the basis of our July 9th meeting there seemed some basis for reaching a satisfactory agreement insofar as the City defendants were concerned, I telephoned Mr. Summers that same day to see whether the TA would be willing to enter into such an agreement. Mr. Summers indicated quite clearly that on

the basis of the Court's statements at the July 5th conference he did not see the need for the TA to agree to anything. However, he finally agreed to meet with plaintiffs' counsel on July 11th. At that meeting Mr. Summers made it clear that the TA would not agree at this time to modify its policy of excluding methadone maintained persons from all TA positions, or to provide the named plaintiffs any specific relief, in accordance with the findings made pursuant to the City's plan. Rather, he indicated that the TA intended simply to await the conclusion of the City's study before determining what, if any, action it should take. Thus he stated specifically that:

(a) the TA would not necessarily apply any new medical standards for TA employment promulgated by the City Civil Service Commission;

(b) the TA would not stipulate that it would not use methadone maintenance as a basis for rejection under the "one-in-three" rule (N.Y. Civil Service Law §61.1) from the positions for which the City Civil Service Commission had determined that methadone maintenance should not be a basis for disqualification;

(c) the TA would not stipulate to revise its Rules and Regulations, which presently provide for the dismissal of all TA employees using methadone, so that in the future TA employees on methadone would not be automatically dismissed from positions for which they were found to be medically qualified by the City Civil Service Commission;

(d) the TA would not stipulate to provide plaintiffs with any records or other information which

would enable them to determine whether the TA was in fact applying any new medical standards promulgated pursuant to the City defendants' plan;

(e) the TA would not stipulate to apply any new medical standards promulgated under the City defendants' plan for TA positions to comparable positions in the Manhattan and Bronx Surface Transit Operating Authority (hereinafter "MaBSTOA"), a TA subsidiary which under state law is not subject in any way to Civil Service Commission jurisdiction. Thus the statement in the letter from TA counsel to the Court of July 11, 1973, p. 2, para. 2, to the effect that medical standards applicable to TA positions will continue to be applicable to equivalent MaBSTOA positions, is meaningless, since as noted supra the TA will not stipulate that any new medical standards promulgated under the City's plan will in fact be applicable to TA positions;

(f) the TA would not make any stipulations with respect to plaintiffs and their class which would protect their rights to be appointed and/or reinstated to positions for which they had in the past successfully completed the competitive examination process, and for which they would be medically qualified under the new medical standards to be promulgated pursuant to the City's plan. More specifically, Mr. Summers stated that:

(i) the TA would not make any commitment whatsoever respecting either the named plaintiffs or the members of their class. Everything would simply

have to await the results of the City's plan and the TA's decision whether or not to abide by those results;

(ii) the TA would not provide plaintiffs' counsel with the medical records of plaintiffs or of the members of their class;

(g) Finally, with respect to the TA positions covered by City-wide Civil Service employment titles, Mr. Summers stated that the TA was presently excluding all methadone maintained persons from these positions, and would not agree to modify this policy in any way. As noted supra para. 4, the Civil Service Commission's medical standards presently provide for the eligibility of methadone maintained persons for these positions and the City's review plan as presently formulated does not cover these positions.

Meeting with Representatives of the Transit Authority and of the City Defendants, July 11, 1973 - Modification of City Plan

7. Mr. Roskin joined the meeting and indicated a major change in the City's plan as previously described to the Court and, on July 9, to plaintiffs. Instead of reviewing the medical standards for each TA position prior to the next examination for that position, he stated that the City would allow examinations to go forward for the next 24 months, and eligibility lists to be prepared accordingly, under the old medical standards. Any new standards resulting from the City's review would be promulgated only at the conclusion of the entire study.

Conclusion

8. As indicated in detail supra, plaintiffs have been unable to reach agreement with the defendants on a plan which would warrant staying further proceedings in this case.

9. The City plan guarantees only that there will be no change whatsoever in the TA policy challenged in this lawsuit for at least the next two years. It would result in the promulgation of lists based on the old medical standards, challenged in this lawsuit, which might preclude methadone maintained persons from TA employment for the next 6-7 years (see para.11(a), infra). The City defendants, having originally indicated that the entire study would take only 6 months to complete, and having later agreed to review every position prior to the next examination for that position, have provided the Court with no explanation as to the necessity of taking 24 months to complete the study and of permitting the TA policy to continue unchanged throughout that

period. Obviously there are alternative ways of proceeding which would more adequately protect plaintiffs' rights. See para. 11(a) infra. The City's plan is also far too vague and unformed as described in the affidavit submitted by defendant Bronstein to the Court dated July 12, 1973, to warrant a stay. Thus the composition of the panel responsible for making recommendations to the City Service Commission is obviously key to whether the plan will result in any meaningful review of medical standards, yet there is no indication yet as to who will be on that panel.

10. Moreover, even assuming that the City plan would result in the promulgation of reasonable new medical standards at some future time, there is no guarantee that those standards will result in a change in TA policy in light of the facts that:

(a) The TA will not agree to follow the new medical standards;

(b) The TA is refusing at the present time to follow the City-promulgated medical standards for the TA positions covered by City-wide Civil Service employment titles.

In addition, the named plaintiffs themselves would never receive any relief under the City plan, since only the TA has the power to agree to appoint and/or reinstate them to positions for which they have successfully passed competitive examinations in the past and for which they would be found medically qualified under the City's plan, and the TA has refused to make any such agreement.

11. Accordingly, plaintiffs submit that since the defendants have not been willing to provide plaintiffs or the Court with assurances which would provide any adequate protection to the

rights of plaintiffs and their class, plaintiffs must be permitted to proceed with discovery and to a trial on the merits. Plaintiffs further submit that an order staying the trial in this case would unduly prejudice their rights and interests unless it made provision for, inter alia, the matters contained in paras. (a) - (e) infra. This submission is made without prejudice to plaintiffs' right to submit at a later time detailed suggestions with respect to any order that the Court may determine is appropriate.

(a) A Reasonable Timetable for the City Plan

As in the City plan described to the Court on July 5th and, in more detail, to plaintiffs' counsel on July 9th, the medical standards for all TA positions covered by the plan should be reviewed, and new standards promulgated where appropriate, before new examinations for such positions are given. The positions for which plaintiffs have been examined in the past should be scheduled for review during the first few months of the study.

The present City plan, which would allow examinations to be given for the next 24 months under the medical standards challenged in this lawsuit, is totally unacceptable. As indicated in defendant Bronstein's affidavit, the Civil Service Commission intends to give examinations ~~lists~~ for almost half the employment titles to be reviewed under the plan during the next 12 months alone. By the time the results of the plan are available, new exams may very well have been given for almost all of the positions in the TA.

Since plaintiffs are informed that lists take up to approximately 9 months to prepare, and since §56 of the New York Civil Service Law permits City Civil Service lists to last as long as 4 years, methadone maintained persons might be preclude from TA employment for as long as the next 6-7 years.

The City defendants have indicated to plaintiffs that one reason for revising the plan was to enable them to review simultaneously all related job titles. While this may be one rational way to proceed, it cannot be done at the sacrifice of plaintiffs' constitutional rights where, as here, there are alternative methods of proceeding which would more adequately accomodate those rights. It would clearly be possible for the Civil Service Commission to review positions in the order in which they are scheduled for examination, together with all related positions, before new examinations are given. Postponing the test dates scheduled for the next few months would give the City defendants adequate time to organize and initiate their study. And such postponement need cause no problem in terms of providing the TA with manpower, since the Civil Service Commission could expedite the process of preparing the lists for any position for which additional personnel were needed. (As noted supra, plaintiffs are informe that at present lists are not published until up to approximate ly nine months after the date an examination is given.) If it were determined to be absolutely essential to proceed with certain examinations before the Commission would have an opportunity to review the relevant medical standards, methadone

maintained persons should at least be permitted to participate in the examinations subject to the condition that they might subsequently be found medically disqualified.

(b) Necessary Commitments by the TA

Any order staying the action to await the results of the City-proposed study must at the least bind the defendants, including the party primarily responsible for the policy challenged in the lawsuit, to abide by the results of the study. The TA has made it clear that it will not now agree to abide by those results and, indeed, that it intends to await the conclusion of the study to decide what course then to follow. The Civil Service Commission has, to plaintiffs' knowledge, given no indication until the institution of this lawsuit that the TA was obliged to follow medical standards promulgated by the Commission. And the TA has specifically stated to plaintiffs' counsel that it will not necessarily abide by whatever medical standards the Commission promulgates. Moreover the TA's obligations under state law bear no necessary relationship to its practical power to exclude methadone maintained persons if it chooses to. This is illustrated by the fact that the TA has to date been disqualifying methadone maintained persons from positions covered by City-wide employment titles in violation of the medical standards promulgated by the City Civil Service Commission. It is further illustrated by the testimony given by defendant Chairman of the Civil Service Commission, Harry I. Bronstein, at the hearings held by the City Human Rights Commission on May 23, 1972, in which he disclaimed any

responsibility for the TA's policy of discriminating against ex-offenders, on the grounds that it is the TA that has hiring discretion with respect to its workforce, and that that discretion can be exercised through the "one-in-three"rule.* There is nothing in the law of New York that would prevent use of the "one-in-three"rule to exclude an applicant on the basis of his/her participation in a methadone maintaince program; there is no requirement under New York law that the TA give an applicant rejected under the "one-in-three"rule any reason for his rejection; and there is no appeal from such a rejection to the Civil Service Commission. Moreover, the City has no jurisdiction whatsoever under state law over eligibility for employment in any of the MaBSTOA positions in the TA.

It is therefore essential that any order staying proceedings in this case provide at the least that:

(i) the TA must apply whatever medical standards the City promulgates as a result of its study to all TA positions subject to Civil Service jurisdiction as well as to all MaBSTOA positions;

(ii) the TA shall not use present or past methadone maintenance as a basis for disqualification under the "one-in-three" rule;

(iii) the TA must provide plaintiffs and the Court with records on all methadone maintained persons who

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* "Although we give examinations and pass upon qualifications of the candidates, the Transit Authority has the discretion in their hiring policy;..."

"...because the agency that does the hiring has the responsibility as they see fit as long as we qualify."

. . .

"It's the agency that makes the choice. The One in Three Law finds itself in the state, which we must abide by, and the agency has the choice of one out of three."

(TR 463-64)

apply for TA employment as well as all such persons who are dismissed from TA employment; and

(iv) the TA must provide reasons for the rejection under the "one-in-three" rule of any methadone maintained applicant.

(c) Specific Relief Relating to the Plaintiffs

The named plaintiffs have brought this lawsuit challenging the defendants' actions in dismissing some of them and in refusing to employ others as in violation of their rights under the federal Constitution. The Court cannot stay the action on the basis of a plan proposed by the City which could not provide the named plaintiffs any relief. Any order staying the action must, at the least, provide that the named plaintiffs shall be employed and/or reinstated, with backpay, to any positions for which they have successfully completed competitive examinations and for which they are found medically qualified under the City's study.

(d) Employment of Methadone Maintained Persons in City-wide Employment Titles

This action was brought challenging the TA's policy of excluding methadone maintained persons from all TA positions, including those covered by City-wide titles. The number of TA employees working in such titles is substantial. In the absence of discovery, plaintiffs are unable to ascertain their exact number, but have been informed that it lies between 5,000 and 10,000.

The City defendants' plan, as presently formulate does not include a review of the medical standards for employment in City-wide titles, presumably because the Civil Service Commission has already determined that methadone maintained

persons are medically qualified for them. In light of the TA's present refusal to employ methadone maintained persons in City-wide employment titles, the order should enjoin the TA from continuing that policy, and should include provisions comparable to those requested in (b)(i)-(iv) supra.

(e) Finalized City Plan

No order should be entered staying this action until the City defendants have submitted a final plan to the Court, after counsulting with plaintiffs, which plan shall provide for adequate participation by plaintiffs, and shall name the persons with ultimate responsibility for making the recommendations to the Civil Service Commission respecting new medical standards for employment with the TA. As the TA has been granted the right to nominate one doctor to the review committee under the plan as presently formulated, plaintiffs have requested a similar right. Any order staying the action should also contain provisions providing plaintiffs' counsel with all results of the City's study, including any job analyses and medical recommendations made.

(f) Discovery

Even if a stay of the trial in this case pending completion of the City's study, were warranted, there is no justification for staying all discovery. Plaintiffs are clearly entitled to a response to at least some of the interrogatories and requests for documents previously served and filed so that they will be in a position adequately to assess the results of the City's study when it is completed, and to seek full relief on behalf of the members of their class at that time. Thus there can be no legitimate reason

for denying plaintiffs information such as:

-- the personnel records of the members of plaintiffs' class

-- racial statistics on the composition of the TA workforce as well as of applicants for TA employment

-- reports relating to the TA's policy regarding the employment of alcoholics

-- the views of the members of the TA Board, who are theoretically responsible for TA policy-making, as to the necessity for the exclusion of methadone maintained persons from TA employment, together with records of any formal action taken adopting that policy. (It is plaintiffs' information that the policy was never presented to or adopted by the TA Board members.)

Plaintiffs request that if the Court determines to stay the trial, they at least be provided some opportunity for discovery at this time.

Elizabeth B. DuBois

Elizabeth B. DuBois

Sworn to before me
this 20th day of
July, 1973

Eric D. Balber
Notary Public

ERIC D. BALBER
NOTARY PUBLIC, State of New York
No. 31-4501151
Qualified in New York County
Commission Expires March 30, 1975

LETTER DATED AUGUST 17, 1973 TO COURT FROM JOHN G. DE ROOS

Chairman William J. Ronan
Lawrence R. Bailey
Leonard Braun
William L. Butcher
Donald H. Elliott
Justin N. Feldman
Harold L. Fisher
Mortimer J. Gleeson
Frederic B. Powers
Eben W. Pyne
William A. Shea

New York City
Transit
Authority

370 Jay Street Brooklyn, New York 11201 Phone 212 852-5000

John G. de Roos
General Counsel

001-01
123

August 17, 1973

The Honorable Thomas P. Griesa
United States District Court
for the Southern District of New York
United States Courthouse
Foley Square
New York, N. Y. 10007

Re: Beazer, et al., v. New York City Transit Authority, et al., 72 Civ. 5307

Dear Judge Griesa:

This letter is sent to Your Honor at the suggestion of Mr. Endicott and concerns the conferences regarding the status of the above action, pending the report of the New York City Civil Service Commission on the results of the Commission's study and evaluation of operating and maintenance positions in the New York City Transit Authority.

As Your Honor is aware, we have stated on several occasions that the New York City Transit Authority fully recognizes that the City Civil Service Commission is charged with the duty to establish medical standards for the positions covered. The Authority, however, also recognizes the duty imposed on it by State law. Public Authorities Law, Article 5, Title 9, and specifically Section 1202 thereof, imposes on the Authority the duty and responsibility to operate the transit facilities under the Authority's jurisdiction for, inter alia, the safety of the public.

This statutory duty to provide safe transportation, which affects some four (4) million riders daily, imposes on the members of this Authority a very heavy and non-delegable responsibility.

Letter dated August 17, 1973 to Court from John G. de Roos

The Authority cannot, without disregard of its ultimate responsibility to the public under the Public Authorities Law, commit itself, without perusal and evaluation as to possible impact on the safety of operation of the railroad, to accept now medical standards to be set in futuro.

We, of course, agree with Your Honor's suggestion that all aspects of this litigation be stayed until the report of the Civil Service Commission has issued.

Respectfully,

John G. de Roos
General Counsel

cc Elizabeth B. Du Bois, Esq. ✓
271 Madison Avenue
New York, N. Y. 10016

Norman Redlich, Esq.
Corporation Counsel
Municipal Building
New York, N. Y. 10007

O'Donnell & Schwartz, Esqs.
501 Fifth Avenue
New York, N. Y. 10017

AFFIDAVIT OF HARRY BRONSTEIN
DATED JULY 2, 1973

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER et al

AFFIDAVIT

-against-

NEW YORK CITY TRANSIT AUTHORITY et al

HARRY I. BRONSTEIN, being duly sworn, deposes and says:

1. I am the Chairman of the New York City Civil Service Commission and Director of the Department of Personnel. I make this affidavit to inform the Court of the plans of the Civil Service Commission to determine which, if any, of the operating and maintenance titles of the New York City Transit Authority may be filled by persons who are currently in a methadone maintenance or other chemotherapeutic treatment program.

2. There are approximately 134 operations and maintenance titles in the New York City Transit Authority for which the City Civil Service Commission promulgated medical standards. In order to determine which, if any, of these titles may be held by persons who are currently in a methadone maintenance or other chemotherapeutic treatment program, the Department of Personnel of the City of New York will conduct a job analysis of each title. A job analysis is an on-site study, including observation and interviews, of the duties of a particular position in order to determine the skills, knowledge, and abilities that are necessary for successful performance.

3 As the job analyses are concluded they will be forwarded to a committee, the precise composition of which is at this time, uncertain. It is, however, contemplated that the committee will be composed of responsible personnel from the Department of Personnel and from the New York City Transit Authority, and two medical doctors, each of whom has experience in the area of methadone maintenance or other chemotherapeutic treatment programs utilized to treat drug addicts and preferably in

the area of industrial medicine. It is contemplated that one doctor will be nominated by the Department of Personnel and one by the Transit Authority.

4. The committee will review the job analyses for the purpose of preparing a recommendation for the Civil Service Commission as to the medical standards for each particular title. The review will take into consideration the specific needs of persons currently in chemotherapeutic programs as those needs relate to the requirements of each particular title. In its evaluation the committee will also take into consideration the question of how a title fits into the overall structure of the Transit Authority. Consideration will have to be given to such factors as availability of supervision, rotating, round-the-clock shifts, work locations, and other factors which the committee feels has a bearing on the ability of one in a chemotherapeutic treatment program to safely and successfully perform the duties of a particular job title. It will therefore be necessary for the committee to make its evaluations on a broader basis than just the conclusions of the job analyses. It is the opinion of the Commission that a determination for any particular title must be made as part of the conclusions of the entire study so that all of these factors and the inter-relationships between the titles can be fully and effectively taken into consideration by the committee.

5. The Civil Service Commission will review the recommendations of the committee and make its decision.

6. It is estimated that the period of time needed to complete the necessary job analyses, studies, reviews and recommendations and Commission actions for all operating and maintenance titles (a list of which is annexed hereto as Exhibit A) is approximately 24 months. The expenditure of this time and effort is justified by the tremendous importance of the matter in issue to the general public, i.e., the proposed introduction of methadone users into operational and maintenance positions in the New York City Transit System.

7. In order to meet the anticipated needs of the transit service for the fiscal year ending June 30, 1974 it will be necessary to conduct examinations for the operations and maintenance titles listed on Exhibit B which is annexed hereto. The titles are listed in alphabetical order and the anticipated test date is set forth in the extreme right hand column. The present medical standards as they relate to the use of methadone maintenance or other chemotherapeutic treatment will continue unchanged for each class of positions.

S/
HARRY I. BRONSTEIN

Sworn to before me this

12 day of July 1973

S/

WILLIAM ROSKIN
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission expires March 30, 1974

Affidavit of Harry Bronstein dated July 2, 1973

TITLES FOR THE NEW STANDARDS PROPOSED BY THE TRANSIT AUTHORITY FOR OPEN COMPETITIVE TITLES OF OPERATIONS AND MAINTENANCE POSITIONS IN THE RAPID TRANSIT RAILROAD SERVICE

PER DIEM AND 8 HOUR POSITIONS

Class of Positions

1. Aircraft Maintainer
2. Bus Maintainer - Group A
3. Bus Maintainer - Group B
4. Bus Operator
5. Car Cleaner
6. Car Inspector
7. Car Maintainer - Group A
8. Car Maintainer - Group B
9. Car Maintainer - Group C
10. Car Maintainer - Group E
11. Car Maintainer - Group F
12. Car Maintainer - Group J
13. Car Maintainer - Group K
14. Car Maintainer - Group L
15. Car Maintainer - Group M
16. Car Inspector (Inspection)
17. Car Maintainer Trainee
18. Collecting Agent
19. Conductor
20. Electronic Equipment Maintainer
21. Light Maintainer
22. Maintainer's Helper - Group A
23. Maintainer's Helper - Group B
24. Maintainer's Helper - Group C
25. Maintainer's Helper - Group D
26. Mechanical Maintainer - Group B
27. Mechanical Maintainer - Group C
28. Motorman
29. Power Cable Maintainer
30. Power Distribution Maintainer
31. Power Maintainer - Group B
32. Railroad Caretaker
33. Railroad Clerk
34. Railroad Porter
35. Railroad Stock Assistant
36. Railroad Stockman
37. Railroad Watchman
38. Road Car Inspector
39. Shop and Car Serviceman (Car Maintenance)
40. Signal Maintainer
41. Structure Maintainer - Group A
42. Structure Maintainer - Group B
43. Structure Maintainer - Group C
44. Structure Maintainer - Group D
45. Structure Maintainer - Group E
46. Structure Maintainer - Group F
47. Structure Maintainer - Group G
48. Telephone Cable Maintainer
49. Telephone Maintainer
50. Token Man
51. Trackman
52. Turnstile Maintainer
53. Ventilation & Drainage Maintainer

PER ANNUM POSITIONS

1. Assistant Station Supervisor
2. Assistant Train Dispatcher
3. Assistant Supervisor (Air Conditioning, Rolling Stock)
4. Assistant Supervisor (Buses and Shops)
5. Assistant Supervisor (Cars and Shops)
6. Assistant Supervisor (Electrical Power)
7. Assistant Supervisor (Electronic Equipment)
8. Assistant Supervisor (Elevators and Escalators)
9. Assistant Supervisor (Lighting)
10. Assistant Supervisor (Power Distribution)
11. Assistant Supervisor (Signals)
12. Assistant Supervisor (Stores, Materials and Supplies)
13. Assistant Supervisor (Structures)
14. Assistant Supervisor (Structures - Group C)
15. Assistant Supervisor (Telephones)
16. Assistant Supervisor (Track)
17. Assistant Supervisor (Turnstiles)
18. Assistant Supervisor (Ventilation and Drainage)
19. Foreman (Buses and Shops)
20. Foreman (Cars and Shops)
21. Foreman (Electrical Power)
22. Foreman (Electronic Equipment)
23. Foreman (Elevators and Escalators)
24. Foreman (Lighting)
25. Foreman (Power Cables)

EXHIBIT "A"

TITLES FOR THE NEW STANDARDS PROPOSED BY THE TRANSIT AUTHORITY

PER ANNUM DESIGNATIONS (Cont'd.)

26. Foreman (Power Distribution)
27. Foreman (Railroad Watchman)
28. Foreman (Signals)
29. Foreman (Stores, Materials and Supplies)
30. Foreman (Structures - Group A)
31. Foreman (Structures - Group B)
32. Foreman (Structures - Group C)
33. Foreman (Structures - Group D)
34. Foreman (Structures - Group E)
35. Foreman (Structures - Group F)
36. Foreman (Telephones)
37. Foreman (Track)
38. Foreman (Turnstiles)
39. Foreman (Ventilation and Drainage)
40. Motorman Instructor
41. Schedule Maker
42. Schedule Maker (Surface)
43. Surface Line Dispatcher
44. Train Dispatcher
45. Yardmaster
46. Chief Schedule Maker
47. Chief Schedule Maker (Surface)
48. Chief Surface Line Dispatcher
49. Senior Surface Line Dispatcher
50. Station Supervisor
51. Supervisor (Buses and Shops)
52. Supervisor (Cars and Shops)
53. Supervisor (Electrical Power)
54. Supervisor (Electronic Equipment)
55. Supervisor (Elevators and Escalators)
56. Supervisor (Lighting)
57. Supervisor (Power Distribution)
58. Supervisor (Signals)
59. Supervisor (Stores, Materials and Supplies)
60. Supervisor (Diesel Equipment - Car Maintenance)
61. Supervisor (Structures)
62. Supervisor (Structures - Group C)
63. Supervisor (Telephones)
64. Supervisor (Track)
65. Supervisor (Turnstiles)
66. Supervisor (Ventilation and Drainage)
67. Trainmaster
68. Assistant Superintendent (Buses and Shops)
69. Assistant Superintendent (Cars and Shops)
70. Assistant Superintendent (Line Equipment)
71. Assistant Superintendent (Power)
72. Assistant Superintendent (Signals)
73. Assistant Superintendent (Structures)
74. Assistant Superintendent (Surface Transportation)
75. Assistant Superintendent (Track)
76. Assistant Superintendent (Transportation)
77. Coordinator of Training (Transit Authority)
78. Director of Employee Counseling (Transit Authority)
79. Assistant Safety Coordinator (Transit Authority)
80. Safety Coordinator (Transit Authority)
81. Administrative Safety Officer (Transit Authority)

Dated, May 7, 1971
CITY CIVIL SERVICE COMMISSION. Harry I. Bronstein, Chairman; Milton Samorodin and James J. Smith, Commissioners; George Henry, Jr., Secretary.

Affidavit of Harry Bronstein dated July 2, 1973

Director, Bureau of Personnel - A

July 9, 1973

Acting Chief, Classification Division - T

List of Transit Authority Candidates for Operations and Maintenance Positions Established Fiscal 1973-1974.

Title No.	Title	91-13 Code Number	Effective Date
[illegible]	Assistant Superintendent (Buses & Depots)	91343	6/22/74
[illegible]	Assistant Superintendent (Surface Transportation)	91365	6/25/74
9101	Assistant Supervisor (Buses and Depots)	91339	5/29/74
9131	Assistant Supervisor (Motormen and Towermen)	90780	2/20/74
9160	Assistant Supervisor (Power Distribution)	91782	3/9/74
9169	Assistant Supervisor (Signals)	91783	5/22/74
9183	Assistant Supervisor (Stores, Materials and Supplies)	12212	6/21/74
9189	Assistant Supervisor (Shops)	91338	1/9/74
9191	Car Maintainer - Group A	92514	1/24/74
9192	Car Maintainer - Group B	92516	3/10/74
9191	Car Maintainer, Group F	90705	11/10/73
9219	Cashier (Transit Authority)	10606	4/27/74
9513	Chief Schedule Maker	91201	4/17/74
9565	Chief Surface Line Dispatcher	91251	5/15/74
9514	Conductor	91207	3/30/74
9515	Electronic Equipment Maintainer	91771	12/13/73
9516	Foreman (Cars and Shops)	91317	5/13/74
9519	Foreman (Motormen and Towermen)	90710	12/5/73
9520	Foreman (Maintenance Shops)	91013	10/17/73
9517	Foreman (Structures - Group A)	92070	6/3/74

EXHIBIT "B"

Exam. No.	Title	Title Code Number	Test Date
35[illegible]	Lineman (Construction - Group A)	92270	6/8/74
3549	Lineman (Structures - Group C)	92370	6/8/74
3550	Lineman (Structures - Group F)	91870	6/8/74
3551	Maint. Mech's Helper - Group B	90724	5/25/74
3552	Mechanical Maintainer - Group B	90727	6/21/74
3553	Mechanical Maintainer - Group C	90723	1/19/74
1051	Mechanical Maintainer - Group C	90728	5/4/74
3512	Motorman	91211	8/4/73
3554	Motorman Instructor	91230	6/29/74
3517	Motor Distribution Maintainer	91737	7/7/73
3511	Railroad Clerk	10607	9/22/73
3020	Railroad Clerk	10607	3/23/74
3021	Railroad Porter	82009	4/20/74
3505	Railroad Signal Specialist	91795	2/13/74
3505	Safety Coordinator (Transit Authority)	35502	10/3/73
3556	Senior Surface Line Dispatcher	91250	6/22/74
3521	Signal Maintainer	91741	10/13/73
3522	Structure Maintainer, Group A	92030	11/10/73
3522	Structure Maintainer, Group B	92245	11/10/73
3522	Structure Maintainer, Group C	92345	11/10/73
3522	Structure Maintainer, Group D	92346	11/10/73
3522	Structure Maintainer, Group E	91830	11/10/73
3112	Structure Maintainer, Group F	91840	3/2/74
3647	Structure Maintainer, Group F	91340	1/5/74
3110	Structure Maintainer Trainee - Group B	92041	2/9/74

Affidavit of Harry Bronstein dated July 2, 1973

Item No.	Title	Title Code Number	Test Date
3111	[illegible] Maintainer Trainee - Group C	92040	1/9/74
3521	Supervisor ([illegible] and Shops)	91345	1/30/74
3557	Supervisor (Cars and Shops)	91346	11/7/73
3535	Supervisor (Class I Equipment & Car Maintenance)	90796	7/24/73
3584	Supervisor (Lighting)	91791	4/24/74
3534	Supervisor (Stock / Materials [illegible] Supplies)	122[illegible]	5/22/74
2675*	Supervisor (Structures)	90791	9/12/73
3518	Supervisor (Structures - Group C)	92390	9/12/73
3559	Supervisor (Ventilation and Drainage)	90793	3/29/74
3560	Trackman	90744	6/15/74
3015	Trackman	90744	12/8/73
1033	Tunnel Maintainer	90745	2/23/74
3561	Ventilation and Drainage Maintainer	90747	12/19/73
1034	Ventilation and Drainage Maintainer	90747	6/29/74

Leon Mironov
Assistant Chief
Examining Division 2

HM/bch

BEST COPY AVAILABLE

Plaintiffs' Amended Complaint filed November 9, 1973

001-01

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

#140

CARL A. BEAZER, et al.,	:	
Plaintiffs,	:	72 Civ. 5307
-against-	:	AMENDED
NEW YORK CITY TRANSIT AUTHORITY, et al.,	:	COMPLAINT
Defendants.	:	(Class Action)

PRELIMINARY STATEMENT

1. This action is brought on behalf of persons who have been denied employment or dismissed from employment by the New York City Transit Authority (hereinafter "TA") or the Manhattan and Bronx Surface Transit Operating Authority (hereinafter "MaBSTOA") solely because of their present or past participation in methadone maintenance programs duly licensed and authorized pursuant to state and federal laws and regulations (hereinafter referred to as "duly licensed and authorized methadone maintenance programs"). The action challenges the present TA and MaBSTOA policy of refusing to employ in any position all persons participating in such programs, without regard to their individual ability to perform, as indicated by their record of performance on-the-job with the TA, MaBSTOA, or elsewhere, their record of adherence to the requirements of the methadone program in which they are enrolled, or any other relevant criterion.

2. The policy is challenged on the ground that it discriminates unlawfully against persons who are participating or who have participated in duly licensed and authorized

methadone maintenance programs, since there is no basis for concluding that a person who is participating or who has participated in such a program is less qualified to perform as an employee of the TA or MaBSTOA, solely because of such present or past participation, than others accepted for such employment.

3. The TA's and MaBSTOA's policy is further challenged on the ground that it discriminates unlawfully against former heroin addicts who are participating or who have participated in duly licensed and authorized methadone maintenance programs, as compared to other former heroin addicts, including those participating in drug-free treatment programs. There is no reasonable ground for concluding that former heroin addicts who are presently participating or have participated in methadone maintenance programs are less qualified to perform the duties of TA or MaBSTOA employees than all other former heroin addicts.

4. The TA's and MaBSTOA's policy of firing all employees who are participating or who have participated in methadone maintenance programs is further challenged on the ground that it discriminates unlawfully against such persons, as compared to various other groups of employees which the TA and MaBSTOA concludes are not fully qualified to perform the duties of all its various positions. These include alcoholics and persons with such medical disabilities as epilepsy or heart conditions. It is the TA's and MaBSTOA's policy not to fire such persons if they have three years' seniority but, rather, to consider their cases on an individual basis and assign them to job positions appropriate to their condition. There is no reasonable ground

for concluding that present or past methadone maintenance program participants are, as compared to persons in these groups, less qualified to perform the duties of all the various positions in the TA and MaBSTOA.

5. The action charges, therefore, that the TA's and MaBSTOA's policy with respect to present and past methadone maintenance program participants constitutes a denial of governmental employment to a particular class of persons without rational justification in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

6. The action further alleges that the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs has a significant and substantial discriminatory impact on blacks and Hispanics [1/], since such programs' participants are disproportionately black and Hispanic as compared to the population eligible for employment with the TA or MaBSTOA. The policy is therefore challenged on the additional ground that it constitutes a racially discriminatory employment criterion which has not been and cannot be demonstrated by the employer to be necessary to the safe and proper conduct of its business, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e et seq.)

1/ As used herein, the term "Hispanic" refers to persons who were born or who are descended from persons who were born in Puerto Rico, Cuba or other Caribbean countries.

7. The TA's and MaBSTOA's policy is further challenged on the ground that it conflicts with federal laws and regulations authorizing methadone maintenance treatment as one means of dealing with the problem of drug abuse. It is alleged that the TA's and MaBSTOA's policy burdens and impedes participation in duly licensed and authorized methadone maintenance programs in derogation of rights recognized by statutes and regulations of the United States.

JURISDICTION

8. This is a civil action brought under 42 U.S.C. §1981 providing for the equal rights of citizens and of all persons within the jurisdiction of the United States, including the right to contract; under 42 U.S.C. §1983, to redress the deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States; and under Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e et seq.) Plaintiffs seek a declaratory judgment, pursuant to 28 U.S.C. §2201, a permanent injunction, and such other relief as may be appropriate to remedy the unlawful discrimination practiced by defendants against plaintiffs and all others similarly situated. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343(3) and (4); 42 U.S.C. §2000e-5(f)(3); and 28 U.S.C. §1331(a). The amount in controversy, exclusive of interest and costs, exceeds ten thousand dollars ($10,000) for each of the named plaintiffs.

Plaintiffs' Amended Complaint filed November 9, 1973

CLASS ACTION ALLEGATIONS

9. Plaintiffs bring this action on their own behalf and on behalf of all those similarly situated, pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

10. It is impossible to enumerate with any precision the members of the class, but it is clear that the class is so numerous that joinder of all members is impracticable.

11. The class consists of:

A. All those persons who have been dismissed from employment by the TA or MaBSTOA, or would in the future be subject to dismissal, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;

B. All those persons whose applications for employment with the TA or MaBSTOA have been rejected, or would in the future be subject to rejection, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;

C. All those persons who have been or will in the future be deterred from applying for employment with the TA or MaBSTOA by the TA's and MaBSTOA's policy of excluding from such employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs.

12. The plaintiffs will fairly and adequately protect the interests of the class. Each of them either was dismissed from employment with the TA or MaBSTOA or had his application

for such employment denied, solely because of his present or past participation in a duly licensed and authorized methadone maintenance program. Their claims are typical of the claims of the class.

13. The questions of law and fact common to the class include the following:

A. Whether the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis, as compared to all other persons eligible for employment with the TA or MaBSTOA, and thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

B. Whether the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis, as compared to other former heroin addicts, including those participating in drug-free treatment programs, and thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

C. Whether the TA's and MaBSTOA's policy of dismissing from employment all persons who are participating

or who have participated in duly licensed and authorized methadone maintenance programs, discriminates against such persons on an irrational basis as compared to various other groups of employees which the TA or MaBSTOA concludes are not fully qualified to perform the duties of all its various positions, and thereby violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

D. Whether the TA's and MaBSTOA's policy of excluding from employment all persons participating in duly licensed and authorized methadone maintenance programs, constitutes a racially discriminatory employment criterion which has not been and cannot be demonstrated by the TA or MaBSTOA to be necessary to the safe and proper conduct of its business, and thereby violates the Equal Protection Clause to the Fourteenth Amendment to the United States Constitution and Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e et seq.);

E. Whether the TA's and MaBSTOA's policy of excluding from employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs, burdens and impedes participation in such programs, in derogation of rights recognized by statutes and regulations of the United States;

F. What relief would be appropriate on behalf of the class.

Plaintiffs' Amended Complaint filed November 9, 1973

PARTIES

14. Plaintiff CARL A. BEAZER, a black, resides at 1074 Summit Avenue, Bronx, New York. He was hired by the TA in May, 1960. He was dismissed by the TA on August 15, 1972, solely because of his participation in a duly licensed and authorized methadone maintenance program.

15. Plaintiff JOSE R. REYES, an Hispanic, resides at 12-11 31st Avenue, Astoria, New York. He was hired by the TA in April, 1968. He was dismissed by the TA on September 29, 1972, solely because of his participation in a duly licensed and authorized methadone maintenance program.

16., Plaintiff FRANCISCO DIAZ, an Hispanic, resides at 3865 Baychester Avenue, Bronx, New York. He passed the examination for the position of Maintainer's Helper with the TA administered in or about February of 1970. At his preappointment medical examination he was found medically disqualified, and he was denied employment with the TA, on September 23, 1970, and continues to be excluded from such employment, solely because of his participation in a duly licensed and authorized methadone maintenance program.

16a. Plaintiff MALCOLM K. FRASIER, a black, resides at 1830 Lexington Avenue, New York, New York. He passed both the examination for the position of Bus Cleaner with MaBSTOA administered in or about late 1968 or early 1969, and the examination for the position of Bus Operator with MaBSTOA administered in or about October, 1972. At his preappointment medical examinatior for the position of Bus Operator he was found medically disqualified and was denied such employment with MaBSTOA on March 14, 1973, and continues to be excluded from such employment, due

solely to the fact that he was then participating in a duly licensed and authorized methadone maintenance program. At his preappointment medical examination for the position of Bus Cleaner he was found medically disqualified and was denied such employment with MaBSTOA on April 12, 1973, and continues to be denied such employment, solely because of his past participation in a duly licensed and authorized methadone maintenance program.

17. Defendant TA exists pursuant to the laws of the State of New York (N.Y. Pub. Auth. Law §1201(1)), and is declared by law to be a body corporate performing a governmental function (N.Y. Pub. Auth. Law §1201(1) and §1202(2)). It has as its purpose, inter alia, the operation of the New York City subway system (N.Y. Pub. Auth. Law §1202(1)). In furtherance of that purpose it employs approximately 42,000 - 43,000 persons.

17a. Defendant MaBSTOA exists pursuant to the laws of the State of New York (N.Y. Pub. Auth. Law §1203-a(2)), and is declared by law to be a public benefit corporation which is a subsidiary corporation of defendant TA (N.Y. Pub. Auth. Law §1203-a(3)). It has as its purpose, inter alia, the operation of certain omnibus lines in New York City (N.Y. Pub. Auth. Law §1203-a(3)). In furtherance of that purpose it employs approximately 7,000 - 8,000 persons.

18. Defendant WILLIAN J. RONAN is a member of the TA and a director of MaBSTOA and serves as the chairman of the TA and MaBSTOA. He also serves as the TA's and MaBSTOA's chief executive officer and is responsible, inter alia, for the appointment, discipline and removal of the TA's and MaBSTOA's employees (N.Y. Pub. Auth. Law §§1201(2), 1203-a(2)).

19. Defendants WILLIAM L. BUTCHER, LAWRENCE R. BAILEY, HAROLD L. FISHER, WILLIAM A. SHEA, EBEN W. PYNE, LEONARD BRAUN,

JUSTIN N. FELDMAN, DONALD H. ELLIOTT, FREDERIC B. POWERS and MORTIMER GLEESON are all members of the TA and directors of MaBSTOA. Together with defendant Ronan they constitute all of the TA's members and all of MaBSTOA's directors.

20. Defendant WILBUR B. McLAREN is the executive officer in charge of labor relations and personnel for the TA, and defendant LOUIS LANZETTA is its medical director.

21. Defendant NEW YORK CITY CIVIL SERVICE COMMISSION is responsible for promulgating rules governing the appointment, promotion and continuance of employment of all employees of the TA (N.Y. Pub. Auth. Law §1210(2)).

22. Defendant NEW YORK CITY DEPARTMENT OF PERSONNEL applies medical standards to applicants for employment with the TA.

23. Defendant HARRY I. BRONSTEIN serves as a member and as chairman of the Civil Service Commission, and as director of the Personnel Department.

24. Defendants DAVID STADTMAUER and JAMES W. SMITH are members of the Civil Service Commision. Together with defendant Bronstein they constitute the Civil Service Commission's entire membership.

FACTUAL ALLEGATIONS

The TA's and MaBSTOA's Policy

25. The TA and MaBSTOA maintain an absolute policy against the employment, in any capacity, of persons who are participating or who have participated in methadone maintenance programs, without regard to their individual ability to perform

as demonstrated by their performance on-the-job with the TA or elsewhere, their record of adherence to the requirements of the methadone maintenance program in which they are participating or have participated, or any other relevant criterion.

26. This policy is enforced by means of a program initiated in or about March, 1970, for the purpose of screening out drug users, under which medical examinations, including urinalyses, are administered on a periodic basis to most TA and MaBSTOA employees, and are administered to applicants for employment prior to appointment.

27. Execution of this policy resulted in the dismissal of plaintiff Beazer from employment with the TA.

A. Plaintiff Beazer was employed by the TA for eleven years, prior to his dismissal. During that period he demonstrated his ability to perform the duties of a variety of TA positions in a superior manner. He received a number of promotions, each of which was based on an assessment of his record, together with his performance on written and practical examinations designed to test a candidate's ability to perform the duties of the position being tested for. Through this process he was promoted from the position of car cleaner to conductor and, on May 15, 1966, to towerman. His performance as a towerman resulted in his being assigned the task of training many new employees.

B. In late April of 1971, plaintiff Beazer volun-

tarily entered the Methadone Maintenance Treatment Program administered by the United States Veterans Administration Hospital located in Manhattan. While participating in this program he continued to perform the duties of his position as towerman in a fully satisfactory manner, from approximately mid-July, 1971, until he was suspended on or about September 1, 1971.

C. On or about August 31, 1971, the TA received records from the Veterans Administration Hospital, in response to its request, indicating that plaintiff Beazer had been receiving methadone maintenance treatment, as a result of which he was immediately suspended from employment, and on October 4, 1971, charged with violating a TA regulation prohibiting the use of drugs. The charges specifically accused him of being "on a drug treatment program."

D. A hearing on these charges was conducted on November 3, and November 22, 1971. During the hearing the TA conceded that it maintained an absolute policy requiring dismissal of and denial of employment to, methadone maintenance program participants. Beazer conceded the charge that he was on a methadone maintenance program, but contended that that alone should not justify his dismissal. A specific request was made that if it was determined some disciplinary action was warranted, he be transferred from his job as towerman to a less

crtical job. On November 26, 1971, the Hearing Referee recommended that the charges be sustained and that Beazer be dismissed, effective November 26, 1971.

E. On June 29, 1972, the Impartial Disciplinary Review Board of the TA recommended that the Hearing Referee's recommendation be sustained. The Board noted that Beazer "has done his job well and has received a relatively few cautions and warnings for the time that he has been employed." It noted further that "from all of the evidence presented, it would appear that Mr. Beazer had handled his job competently while participating in the methadone maintenance program." The Board made its recommendation solely on the basis of findings that Beazer had in fact violated the rule prohibiting the use of drugs by reason of his participating in a methadone maintenance program. The Board urged the TA to reconsider its rules relating to drug users:

> "to determine to what extent, if any, they should be revised in the light of modern medical and scientific advances in the treatment of drug usage. Moreover, it is the recommendation of this Board, that if it is found that an employee using methadone can work in some capacity for the Authority, the Authority take whatever steps that are necessary to reemploy Carl A. Beazer."

F. On August 15, 1972, the TA, without issuing an opinion or giving any reasons for its ruling, adopted the recommendations made in the disciplinary procedure, and dismissed Beazer from employment, effective November

26, 1972.

G. Plaintiff Beazer has had an excellent record in the Veterans Administration Methadone Maintenance Treatment Program from the time he entered, in April of 1971, to date. The Hearing Referee noted in his opinion that "credible evidence" had been presented:

> "that he has never missed coming in and picking up his methadone, and that he is known to be complying with the program because urine samples are taken twice a week and tested.
>
> "It therefore must be concluded that Respondent [Beazer] is adhering to the program. He was described as an 'excellent patient.'"

H. Following Beazer's suspension by the TA, he was employed by the Veterans Administration in their drug detoxification program as a rehabilitation technician counselor.

28. Execution of the TA's and MaBSTOA's policy against the employment, in any capacity, of persons who are participating or who have participated in methadone maintenance programs, resulted in the dismissal of plaintiff Reyes.

A. Plaintiff Reyes was employed by the TA for almost four years, prior to his dismissal. During that period he demonstrated his ability to perform the duties of different positions with the TA in a superior manner. During his period of employment with the TA he was promoted from the position of Maintainers' Helper to

Ventilation and Drainage Maintainer. This promotion was based on an assessment of his record, together with his performance on written and practical examinations designed to test a candidate's ability to perform the duties of the position being tested for. From approximately May 1, 1969, he was responsible for the training and supervision of numerous apprentices.

B. On or about March 1, 1970, plaintiff Reyes voluntarily entered the Beth-Israel Methadone Maintenance Treatment Program, at the St. Claire Hospital. He continued to perform the duties of his position as Ventilation and Drainage Maintainer in a fully satisfactory manner for a period of over one and one-half years, until on or about November 1, 1971, when he was suspended from employment.

C. As a result of a medical examination, conducted on November 1, 1971, the Medical Director of the TA, defendant Lanzetta, discovered that plaintiff Reyes had been receiving methadone maintenance treatment, and told Reyes at that time that he was being suspended because of his participation in methadone maintenance treatment. He was suspended effective immediately, and on December 13, 1971, was charged with violating a TA regulation prohibiting the use of drugs.

D. A hearing on these charges was conducted on January 19, 1972. During the hearing the TA's absolute policy against the employment of methadone

Medical Director of the TA, defendant Lanzetta, testified that he never gave, and it was his policy not to give, permission to TA employees to participate in methadone maintenance programs under any circumstances. And the Hearing Referee noted that the TA's "policy of not permitting employees who are under methadone treatment to remain in the system" had been established. Reyes conceded the charge that he was on a methadone maintenance program, but contended that that alone should not justify his dismissal. There was testimony that scientific tests administered to Reyes by a recognized expert demonstrated that Reyes' psychomotor performance while maintained on methadone, as determined by tests of his rotary pursuit skills and reaction times, was normal or above normal, as was his intellectual performance. On January 21, 1972, the Hearing Referee recommended that the charges be sustained and that Reyes be dismissed.

E. On September 29, 1972, the TA, without issuing an opinion or giving any reasons for its ruling, sustained the charges and dismissed Reyes from employment, effective January 20, 1972.

F. Plaintiff Reyes has had an excellent record in the Beth-Israel Methadone Maintenance Treatment Program at the St. Claire Hospital from the time he entered, in March of 1970, to date. There was testimony at his hearing by the Medical Director of the St. Claire program that he had an excellent record, had never failed to come in to get his methadone as scheduled, and did not use drugs other than methadone.

G. He has been employed by the Mt. Sinae Methadone Maintenance Treatment Program as a social health advocate from January 17, 1972, to date.

29. Execution of the TA's and MaBSTOA's policy against the employment, in any capacity, of persons who are participating or who have participated in methadone maintenance programs, resulted in the denial of such employment to plaintiff Diaz.

A. Plaintiff Diaz has been employed as a sheet metal mechanic with the same employer since approximately March, 1962, a period of almost eleven years. He has participated in the Bernstein Institute Methadone Maintenance Treatment Program of the Beth-Israel Medical Center since November of 1969, a period of approximately three years. Throughout his period of employment he has demonstrated his ability to perform in a superior manner. His fellow workers have elected him union shop steward for the last eight years, in recognition of his leadership abilities.

B. In or about February of 1970, plaintiff Diaz took the examination for the position of Maintainer's Helper with the TA, which he passed. At the preappointment medical examination, on or about June 5, 1970, he revealed the fact that he was a methadone maintenance program participant, and submitted letters from Dr. Harold L. Trigg, Chief of the Methadone Maintenance Service, Associate Director of Psychiatry, and Associate Director of the Bernstein Institute, Beth-Israel Medical

Center, and from a staff medical doctor. These letters testified to his excellent record in the Beth-Israel Program, and specifically noted that he had been totally free of illicit drug use throughout his period of participation in the program. After having successfully completed all aspects of the medical examination, he was told that he was disqualified because methadone program participants were not accepted for employment with the TA.

C. Diaz appealed his "medical disqualification" to the TA and was notified that he did not meet the requirements as established by the TA and the Personnel Department His subsequent appeal to the City Civil Service Commission was denied without opinion on September 23, 1970.

30. Plaintiff Diaz has had an excellent record of participation in the Beth-Israel Methadone Maintenance Treatment Program from the time he entered, in November of 1969, to date.

30a. Execution of the TA's and MaBSTOA's policy against the employment, in any capacity, of persons who are participating or who have participated in methadone maintenance programs, resulted in the denial of such employment to plaintiff Frasier.

A. Plaintiff Frasier has held several positions of employment over the last ten years, and in all such positions has demonstrated his ability to perform as a competent worker. Several of these positions have been as a truck driver, and one has been as a taxicab driver. In October of 1972, plaintiff Frasier began participating in the methadone maintenance program conducted by the Methadone Maintenance Treatment Center. On March 17,

1973, he left this program as a drug-free person after having completed a two month long process of detoxifying from methadone.

B. In or about late 1968 or early 1969, plaintiff Frasier took an examination for the position of Bus Cleaner with MaBSTOA, and in or about October of 1972, he took an examination for the position of Bus Operator with MaBSTOA. He passed both of these examinations.

C. At a preappointment medical examination for the position of Bus Operator, on or about March 9, 1973, plaintiff Frasier revealed that he had been a methadone maintenance program participant, but that he had almost completely detoxified from methadone. He was then taken to see Thomas L. Granger, MaBSTOA Administrative Manager for Personnel and Saul Solano, a MaBSTOA Administrative Associate. Both men informed him that it was the TA's policy not to employ persons with his record of methadone maintenance participation. In a letter dated March 14, 1973, Mr. Granger informed plaintiff Frasier that he would not be employed by MaBSTOA as a Bus Operator because "Your background does not meet the standards established for this position." Upon subsequent inquiry from plaintiff Frasier's counsel, Mr. Granger stated in a letter dated April 19, 1973, that plaintiff Frasier had been denied the Bus Operator's position "because of medical background based on information he divulged to our Medical Director."

D. On or about March 22, 1973, plaintiff Frasier was notified that he was eligible to take a preappointment medical examination, on April 2, 1973, for the position of Bus Cleaner. Plaintiff Frasier reported for that examination, but instead of being allowed to complete it he was instructed to see Mr. Solano. Plaintiff Frasier informed Mr. Solano that he had detoxified from methadone on March 17, 1973, but Mr. Solano replied that he still could not be employed with MaBSTOA due to his past participation in methadone maintenance. In a letter dated April 12, 1973, Mr. Granger informed plaintiff Frasier that he would not be employed by MaBSTOA as a Bus Cleaner because "Your background does not meet the standards established for this position."

30b. Plaintiff Frasier had an excellent record as a methadone maintenance program participant. In a letter to the MaBSTOA medical department dated March 29, 1972, prior to plaintiff's rejection as a Bus Cleaner, Dr. G. Salazar, Clinical Director of the Methadone Maintenance Treatment Center, attested to this fact. Since plaintiff Frasier's withdrawal from methadone maintenance he has continued to report to the Methadone Maintenance Treatment Center for counseling and urinanalyses on a regular basis. During this period he has shown no evidence of illicit drug use.

31. The present "Medical Standards and Regulations For All Operations and Maintenance Positions" with the TA, proposed by the TA and issued May 7, 1971, by the City Civil Service Commission provide that at the preappointment medical examination a candidate will be disqualified for appointment if his urinanalysis

reveals the presence of "unauthorized" substances, and if "drug addiction or drug abuse" are determined. The TA and the Civil Service Commission define these terms to include methadone maintenance. These standards govern 53 classes of positions, and 81 per annum positions, covering approximately 35,000 - 36,000 TA employees. Positions governed included, for example, the following: Bus Maintainer, Car Cleaner, Car Inspector, Car Maintainer, Collecting Agent, Light Maintainer, Maintainer's Helper, Railraod Clerk, Railraod Porter, Telephone Maintainer, Turnstile Maintainer, Ventilage and Drainage Maintainer.

The TA and MaBSTOA Policy Was Adopted Without Adequate Grounds for Concluding It Was Reasonable or Necessary

32. The TA and MaBSTOA adopted their absolute policy against the employment of present and past methadone maintenance program participants, without having had any rational grounds for concluding that a person is not qualified satisfactorily to perform the duties of a TA or MaBSTOA employee, in any capacity, solely by virtue of his participation in such a program.

33. The TA and MaBSTOA made no effort to analyze the requirements of the many jobs to which their employees may be assigned, in order to determine the relevance of a person's present or past participation in a methadone maintenance program to his ability to perform the various different kinds of jobs.

34. The TA and MaBSTOA made no effort to assess the performance of TA or MaBSTOA employees who were participating or who had participated in methadone maintenance programs, and had no evidence that such employees were failing to perform the

duties of their positions satisfactorily, or were not qualified to perform satisfactorily the duties of other positions within the TA or MaBSTOA prior to instituting the policy requiring their discharge and prohibiting the employment of any other such persons.

35. The TA and MaBSTOA had no reliable data related to the characteristics of present or past participants in duly licensed and authorized methadone maintenance programs indicating that such persons would not be able satisfactorily to perform the duties of TA or MaBSTOA employees:

A. The TA and MaBSTOA had no reliable data indicating that the taking of methadone pursuant to duly licensed and authorized methadone maintenance programs would adversely affect any functional capability which might be related to performance of the duties of TA or MaBSTOA employees;

B. The TA and MaBSTOA had no reliable data indicating that present or past participants in duly licensed and authorized methadone maintenance programs were more likely to be abusing drugs so as to adversely affect their ability to perform the duties of TA or MaBSTOA employees, than other persons accepted for employment.

36. The TA and MaBSTOA, therefore, adopted their absolute policy against the employment of present and past methadone maintenance program participants without having had any reasonable grounds for concluding that said policy was necessary.

or indeed that it was rationally related, to the safe and proper conduct of their business.

The TA and MaBSTOA Policy Cannot be Justified as Reasonable or Necessary

37. All available data indicate, in fact, that a person's ability satisfactorily to perform the duties of a TA or MaBSTOA employee would not be adversely affected solely by virtue of his present or past participation in a duly licensed and authorized methadone maintenance program.

38. Methadone maintenance is a widely recognied, officially sanctioned and increasingly dominant form of treatment for persons suffering from addiction to heroin. It is designed to prevent such persons from using heroin, and to enable them to work and otherwise lead productive lives in society.

39. Methadone has been under investigation for use in the maintenance treatment of persons addicted to heroin for more than nine years. Methadone maintenance is now a well-established mode of treatment, pursuant to which stabilizing doses of methadone are administered on a daily basis in order to eliminate the addict's psychological and physiological craving for heroin, and to establish a "blockade" shielding the former addict from the mental and physical effects of heroin.

40. After achieving favorable results with experimental programs, New York State became committed to methadone maintenance on a large scale approximately three years ago.

In January of 1970, Governor Rockefeller asked the New York State Legislature for millions of dollars to make "outpatient methadone facilities available . . . in every community with a substantial addiction problem" (Governor's Budget Message, Session Laws of New York 3053 (McKinney's 1970)). Methadone maintenance is now the dominant mode of treatment for heroin addiction in New York. In the New York City area alone, federal, state and local funds support more than twenty separate methadone maintenance programs with approximately 28,000 participants. The number of persons maintained on methadone is continually increasing.

41. The Food and Drug Administration of the United States Department of Health, Education and Welfare, after consultation with numerous professional groups, advisory committees and individual experts, recognized methadone's established value in the maintenance treatment of heroin addiction by proposing on April 5, 1972, that the drug be removed from its experimental classification under existing federal regulations (Proposed 21 C.F.R. §130.48(b), 37 Fed. Reg. 6940 (1972)). A regulation implementing this recommendation is to be published shortly.

42. Under federal statues, and both proposed and existing federal regulations, the operations of methadone maintenance programs are strictly controlled, and participation in such programs is carefully monitored. Any person dispensing methadone must register annually with the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, and

obtain the approval of the Food and Drug Administration (21 U.S.C. §822; 21 C.F.R. §301; 21 U.S.C. §355; 21 C.F.R. §130.44; Proposed 21 C.F.R. §§130.48(b), 37 Fed. Reg. 6940 (1972)). Present New York State regulations also require that dispensers of methadone obtain certificates of approval and registration issued by the New York State Department of Health, Bureau of Narcotic Control, pursuant to §3311 of the New York Public Health Law (10 N.Y.C.R.R. §80.23). After April 1, 1973, certification under a detailed regulatory scheme established by Title V of the New York Controlled Substances Act will be required of all methadone maintenance programs in the State. Failure to comply with either the state or federal regulatory structure renders the operator of a methadone maintenance program criminally liable.

43. The Food and Drug Administration requires that methadone maintenance program participants be medically tested at least once weekly for evidence of the use of heroin or any other drug clinically indicated (21 C.F.R. §130.44(c)(6); Proposed 21 C.F.R. §130.48(b)(2), 37 Fed. Reg. 6942 (1972)).

44. Pursuant to the laws and regulations cited in paras. 41 - 42 above, and their own policies, administrators of methadone maintenance programs in the New York City area have instituted a variety of procedures to ensure that participants take their methadone as prescribed, and to determine whether they take illicit drugs. These procedures include, inter alia: supervision of the administration of methadone to ensure that it is taken on a regular basis as prescribed; regular urinalysis (at least one weekly) to determine whether the prescribed

methadone is being taken and also whether there has been illicit drug use; supervision and monitoring by counselors and other supportive personnel who are proficient in detecting the symptoms of illicit drug use.

45. The TA and MaBSTOA have no comparable procedures to assure themselves that their employees are not using illicit drugs. On information and belief it is the TA's and MaBSTOA's policy at present to test their employees for illicit drug use only approximately once a year, and persons in certain positions of employment with the TA and MaBSTOA are apparently never tested.

46. Scientifically designed and administered studies have uniformly found that methadone maintenance has no adverse effect on performance effectiveness. These studies are based on tests of intellectual functioning, and of psychomotor performance as determined by rotary pursuit tests and by visual and auditory reaction-time tests. Studies of the performance of persons in situations requiring both skilled performance and social responsibility also show that methadone maintenance has no adverse effect.

47. The City of New York has recognized both the employability, and the need for employment, of ex-addicts, including ex-addicts who are or who have participated in methadone maintenance programs. On March 22, 1972, the City's Department of Personnel published a personnel policy and procedure bulletin relating to "City Policy on Employment of Ex-Drug Addicts." It notes that the policy resulted from "an intensive study of the

employability of ex-drug addicts." And it provides that ex-addicts, including specifically those persons participating in methadone maintenance programs, shall not be automatically disqualified from employment in any City position except the uniformed services.

48. The TA's and MaBSTOA's absolute policy against the employment of methadone maintenance program participants is therefore not necessary, and indeed is not rationally related, to the safe and proper conduct of their business.

The TA's and MaBSTOA's Policy Discriminates Against Methadone Maintenance Program Participants as Compared to Other Former Heroin Addicts

49. The TA and MaBSTOA do not maintain an absolute policy against the employment of former heroin addicts who have not participated in methadone maintenance programs. Instead the TA and MaBSTOA make decisions as to the employment of such persons based on the circumstances of the individual case.

50. There is no reasonable ground for concluding that former heroin addicts who are presently participating or who have participated in duly licensed and authorized methadone maintenance programs are less qualified to perform the duties of TA and MaBSTOA employees than all other former heroin addicts, including those participating in drug-free treatment programs.

The TA's and MaBSTOA's Policy Discriminates Against Present and Past Methadone Maintenance Program Participants as Compared to Other Groups Which the TA and MaBSTOA Conclude Are Not Fully Qualified For All Their Positions

51. The TA and MaBSTOA do not maintain an absolute

policy requiring the discharge of employees suffering from a variety of medical or other disabilities including alcoholism, epilepsy, or heart conditions, who are as a result, in the TA's and MaBSTOA's opinion, not fully qualified to perform the duties of all their various positions. Instead the TA and MaBSTOA allow such persons, under certain circumstances, to continue in their employ, limiting them to select positions where that appears necessary. Thus, for example:

A. TA and MaBSTOA employees with three years' seniority who are discovered to be alcoholics are not automatically discharged. Instead they are suspended from duty and provided with an opportunity to attend an alcoholic treatment program. Upon discharge by the treatment center the alcoholic is allowed to resume work with the TA or MaBSTOA in a non-critical position. If he maintains a good record for three subsequent years, he will be eligible for his previous position, even if it is a critical, safety-sensitive position. Approximately 3,000 employees are now participating in the TA's alcoholism program, receiving treatment and/or counselling.

B. TA and MaBSTOA employees with three years' seniority who are discovered to have medical disabilities such as epilepsy or heart conditions, are placed, whenever possible, in "limited service" positions, rather than being discharged. The TA now has approximately 1,500 employees in limited service positions.

52. There is no reasonable ground for concluding that methadone maintenance program participants are less qualified to perform the duties of all the various positions within the TA or MaBSTOA than employees in the groups referred to in para. 51 above.

The TA's and MaBSTOA's Policy Has a Racially Discriminatory Impact

53. Statistics available from the United States Department of Commerce, Bureau of the Census indicate that the civilian workforce[2/] for the New York Standard Metropolitan Statistical Area[3/] is approximately 15.0% black and 5.1% Hispanic. The racial composition of this population can be assumed to approximate the racial composition of the population eligible for employment with the TA and MaBSTOA save for their policy of excluding all present and past methadone maintenance program participants. The methadone maintenance population, essentially a sub-group of the civilian workforce, is approximately 30.3% black and 19.7% Hispanic.[4/] This data indicates that the probability of a black

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2/ "Civilian workforce" is defined by the Bureau of the Census to include all non-military persons who are either employed, or looking for and available to accept employment.

3/ "Standard Metropolitan Statistical Area" (SMSA) is a designation utilized by the Bureau of the Census. Counties contiguous to a county or counties containing a city of 50,000 persons or more are included in a SMSA if, according to criteria established by the Bureau of the Census, they are socially and economically integrated with the central city. The New York SMSA includes New York City and Westchester, Rockland, Nassau and Suffolk Counties. It comprises the area from which the TA and MaBSTOA can reasonable be expected to draw their 49,000-51,000 employees.

4/ Records regarding the ethnic composition of the methadone maintenance population are maintained by the Rockefeller University Methadone Information Center. Under contract to the New York State Narcotic Addiction Central Commission, the center is responsible for gather extensive information concerning methadone maintenance in the New York City metropolitan area.

or Hispanic person being denied employment by the TA or MaBSTOA due to his present or past participation in methadone maintenance is substantially and significantly higher than the same probability for his white counterpart.

54. Hence, the TA's and MaBSTOA's policy of excluding all present and past methadone maintenance program participants from employment has a significant and substantial discriminatory impact upon black and Hispanic persons otherwise eligible for TA and MaBSTOA employment.

The TA's and MaBSTOA's Policy Burdens and Impedes Participation In Methadone Maintenance Treatment

55. Federal law, and the regulations and policies of various federal governmental agencies, support the right to participate in methadone maintenance treatment. Thus the Drug Abuse Office and Treatment Act of 1972, Public Law 92-255, 86 Stat. 65, sect. 101(8), provides that: "Control of drug abuse requires the development of a comprehensive, coordinated long-term federal strategy that encompasses . . . effective health programs to rehabilitate victims of drug abuse." The federal regulations referred to in paras. 41-43 above provide a regulatory scheme pursuant to which persons can legally be maintained on methadone. Federal agencies provide substantial financial support for the conduct of methadone maintenance programs.

56. Employment is generally recognized to be crucial to the success of a methadone maintenance treatment program. Thus, for example, the "City Policy on Employment of Ex-Drug Addicts" referred to in para. 47 above, states that "the assurance to the addict of a gainful and rewarding employment is an essential

motivating force for undertaking and completing treatment for his addictive habit."

57. Methadone maintenance is a treatment modality which may last anywhere from a few years to a lifetime. Employment opportunity for program participants is, therefore, additionally essential.

58. The TA's and MaBSTOA's policy of excluding from employment all methadone maintenance program participants tends to discourage persons from participating in methadone maintenance programs, penalizes persons who do participate, and reduces their opportunities for rehabilitation.

VIOLATIONS OF LAW

59. As a result of the defendants continuing pattern and practice of discrimination, as illustrated by the specific examples of discrimination described above, plaintiffs and the class they represent have been and are being denied employment with the TA and MaBSTOA in derogation of their rights under the Fourteenth Amendment to the United States Constitution; under 42 U.S.C. §§1981 and 1983; and Under Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e et seq.)

60. The TA's and MaBSTOA's policy of excluding from employment, in any capacity, all present and past participants in methadone maintenance programs violates their rights in that:

A. The policy results in the denial of public employment to certain classes of persons without rational justification in violation of the Due Process and Equal

Protection Clauses of the Fourteenth Amendment to the Constitution;

B. The policy has a significant and substantial discriminatory impact on black and Hispanic persons otherwise eligible for TA and MaBSTOA employment, and neither has been nor can be justified by the TA and MaBSTOA as necessary to the safe and proper conduct of their business, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution and Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §2000e et seq.);

C. The policy burdens and impedes participation in duly licensed and authorized methadone maintenance programs in derogation of rights recognized by statutes and regulations of the United States.

IRREPARABLE INJURY

61. Plaintiffs and the class they represent have no adequate remedy at law. Plaintiffs have suffered, are suffering, and will continue to suffer irreparable injury as a result of defendants' discriminatory policies and practices unless and until the relief demanded in this complaint is granted.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs individually, and on behalf of all others similarly situated, respectfully pray that this Court:

A. Declare, pursuant to 28 U.S.C. §2201, that defendants' refusal to employ, in any capacity, all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs is in violation of the laws and the Constitution

of the United States;

B. Enjoin defendants, their agents, employees, and all those acting in concert with them, and their successors, from refusing to employ, in any capacity, persons who are participating or who have participated in duly licensed and authorized methadone maintenance program solely because of such participation;

C. Order that plaintiffs Beazer, Reyes, Diaz and Frasier and all other members of the class they represent who were dismissed, or whose applications for employment were denied, solely because of their participation in duly licensed and authorized methadone maintenance programs, be provided employment with the TA or MaBSTOA in positions appropriate to their abilities and experience together with backpay and other benefits of employment from the date they were unlawfully discharged or denied employment;

D. Retain jurisdiction of this action until such time as the Court can be assured defendants are complying with its order;

E. Award plaintiffs their costs, including disbursements and reasonable attorneys' fees;

F. Grant such other and further relief as may be proper.

DATED: New York, New York
November 8, 1973

Respectfully submitted,

/s/

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Attorneys for Plaintiffs

Answer of Defendant New York City Transit Authority and Related Defendants to Amended Complaint

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- x

CARL A. BEAZER, et al.,

Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY, et al.,

Defendants.

- x

ANSWER TO AMENDED COMPLAINT

72 CIV. 5307

ANSWER OF DEFENDANTS NEW YORK CITY TRANSIT AUTHORITY, ET AL. TO PLAINTIFFS' AMENDED COMPLAINT

The defendants, New York City Transit Authority, William J. Ronan, William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, William A. Shea, Eben W. Pyne, Leonard Braun, Justin N. Feldman, Donald H. Elliott, Frederic B. Powers, Mortimer Gleeson, Wilbur B. McLaren and Louis Lanzetta, by their attorney, John G. de Roos, answering the amended complaint:

FIRST: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 30, 30b, 38, 39, 41, 42, 43, 44, 55, 56 and 57.

SECOND: Deny the allegations of paragraph 14 except (a) admit that the plaintiff Carl A. Beazer is black and was hired by the Transit Authority on May 11, 1960 and dismissed August 15, 1972 and (b) deny they have knowledge or information sufficient to

form a belief as to the truth of the allegations respecting Beazer's residence.

THIRD: Deny the allegations of paragraph 15 except (a) admit that the plaintiff Jose R. Reyes was hired by the Transit Authority on April 29, 1968 and dismissed on September 29, 1972 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Reyes' ethnic background or place of residence.

FOURTH: Deny the allegations of paragraph 16 except (a) admit that the plaintiff Francisco Diaz passed an examination for the position of Maintainer's Helper given by the City Civil Service Commission on or about February 28, 1970, but was medically disqualified for employment with the Transit Authority and denied appointment on June 5, 1970 and (b) deny they have knowledge or information sufficient to form a belief as to the truth of the allegations respecting Diaz' ethnic background or place of residence.

FIFTH: Deny the allegations of paragraph 16a except (a) admit that the plaintiff, Malcolm K. Frasier, is black, and after passing an examination for the position of bus operator with MaBSTOA, was medically disqualified and denied appointment on March 14, 1973, and thereafter was again medically disqualified on April 12, 1973 for the position of bus cleaner and (b) deny they have knowledge or information sufficient to form a belief as to the allegations respecting Frasier's residence.

SIXTH: Deny the allegations of paragraph 22 except admit that the Transit Authority applies to applicants for employment medical standards promulgated by the City Civil Service Commission after consultation with the Authority.

SEVENTH: Deny the allegations of paragraph 25 except admit that the Transit Authority and MaBSTOA do not employ persons who use or have a history of using narcotic drugs, including methadone. Rule 11(b) of the Rules and Regulations of the Transit Authority Governing Employees Engaged in the Operation of the New York City Transit System, provides as follows:

> "Employees must not use, or have in their possession, narcotics, tranquilizers, drugs of the Amphetamine group or barbiturate derivatives or paraphernalia used to administer narcotics or barbiturate derivatives, except with the written permission of the Medical Director - Chief Surgeon of the System."

EIGHTH: Deny the allegations of paragraph 26 except admit that the Transit Authority and MaBSTOA screen applicants for employment for possible drug usage by means of medical examinations, including urinalysis, and, on a periodic basis, similarly screen certain classes of employees assigned to operating positions.

NINTH: Deny the allegations of paragraph 27 except admit that the plaintiff Carl A. Beazer was first employed by the Transit Authority as a Car Cleaner on May 11, 1960, was later promoted to the position of Conductor and on May 15, 1966 was promoted to the position of Towerman; that on or about August 31, 1971, the Medical Department of the Authority received a written report from the Veteran's Administration Hospital in New York City indicating, among other things, that Beazer had a 15 year history of drug dependence and was then participating in the hospital's methadone maintenance treatment program; that he was suspended from duty on September 1, 1971 and on October 4, 1971, pursuant to §75 of the

Civil Service Law of the State of New York, was charged with misconduct for violating the aforesaid Rule 11(b); that a hearing of the charges was conducted on November 3, 22 and 24, 1971, and the Hearing Referee recommended to the Authority that the charges be sustained and that Beazer be dismissed from service effective November 26, 1971; that prior to the Authority's acting upon the recommendation Beazer appealed to a three-member Impartial Disciplinary Review Board, established pursuant to agreement between the Transit Authority and the Transport Workers' Union of America, Local 100, which is the labor representative for nearly all of the Authority's hourly-paid employees, including employees in the title of Towerman; that the Review Board recommended to the Authority that the recommendation of the Hearing Referee be sustained and on August 15, 1972, the Transit Authority, acting by W. B. McLaren, its Executive Officer for Labor Relations and Personnel, adopted the recommendation of the Hearing Referee and Beazer was dismissed from the Authority's employ effective November 26, 1971. (Exhibit A annexed).

TENTH: Deny the allegations of paragraph 28 except admit that the plaintiff Jose R. Reyes was first employed by the Transit Authority as a Maintainer's Helper on April 29, 1968 and was promoted to the position of Maintainer (Ventilation and Drainage) on July 5, 1970; that on November 1, 1971, Reyes was medically examined and screened for narcotic use resulting in medical findings of such usage; that he was suspended from duty on November 8, 1971 and on or about December 13, 1971 was charged with misconduct for using heroin and methadone in violation of the aforesaid Rule 11(b); that a hearing was held on January 19, 1972

and on or about January 21, 1972, the Hearing Referee recommended to the Authority that the charge be sustained and Reyes dismissed from service effective January 20, 1972; that the Authority by its Executive Officer, W. B. McLaren, approved the recommendation on September 29, 1972. (Exhibit B annexed).

ELEVENTH: Deny the allegations of paragraph 29 except admit that plaintiff Francisco Diaz passed an examination for the position of Maintainer's Helper given by the City Civil Service Commission on February 28, 1970; that he was denied appointment to such position by the Transit Authority upon medical findings of narcotic drug use; that Diaz appealed from such denial to the City Civil Service Commission which denied his appeal on September 23, 1970.

TWELFTH: Deny the allegations of paragraph 30a except admit that the plaintiff Frasier passed examinations for the positions of Bus Operator and Bus Cleaner with MaBSTOA, and when it appeared during pre-employment processing that he was or recently had been a participant in a methadone maintenance program, he was informed by MaBSTOA's representative, Thomas L. Granger, Administrative Manager for Personnel, on March 14, 1973 and April 12, 1973, respectively, that he would not be appointed to the position of Bus Operator or Bus Cleaner because he did not meet the prescribed medical standards.

THIRTEENTH: Deny the allegations of paragraph 31 except admit that on or about May 7, 1971 the City Civil Service Commission, after consultation with the Transit Authority, promulgated "Medical Standards and Regulations for All Operations

and Maintenance Positions, New York City Transit Authority," and the Court is respectfully referred to such document for its substantive provisions and the scope of its application.

FOURTEENTH: Deny the allegations of paragraphs 32, 33, 34, 35, 36, 37, 46, 48, 49, 50, 52, 53, 54, 58, 59, 60 and 61.

FIFTEENTH: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 except they admit that methadone maintenance is one of several modalities of treatment for narcotic addiction.

SIXTEENTH: Deny the allegations of paragraph 45 except admit that pursuant to Rule 31 of the Rules and Regulations Governing Employees Engaged in the Operation of the New York City Transit System, all persons, before they are appointed or promoted to positions in the Transit Authority, are required to submit to medical examinations to determine their medical fitness to perform the duties of the positions sought; that certain classes of operating employees are periodically examined to determine their medical fitness to perform the duties of the positions held by them, and at any time the Medical Director of the Transit Authority or the employee's department head may order or require an individual employee to submit to a medical examination if in his opinion such examination is indicated. The same requirements obtain in MaBSTOA.

SEVENTEENTH: Deny they have knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 except admit that on or about March 22, 1972

the Department of Personnel of the City of New York published a document entitled "Personnel Policy and Procedure Bulletin" relating to City policy on the employment of ex-drug addicts, but that such policy and procedure are not applicable to the defendant Transit Authority or MaBSTOA.

EIGHTEENTH: Deny the allegations of paragraph 51 except admit that under rules, regulations and working conditions of the Transit Authority and MaBSTOA a permanent employee who has a minimum period of two years service and is medically found to be permanently disqualified from performing the full duties of his position because of a non-service connected disability may, in the discretion of such Authority, be assigned to other work provided he is qualified therefor and such work is available, and a permanent employee of the Transit Authority who is disabled from performing the duties of his position as a result of using alcohol may, instead of being dismissed on disciplinary charges, and provided he has at least three years of service, be invited to accept a program of counseling and therapy by such Authority, the charges being held in abeyance pending the outcome of such counseling; and an employee of MaBSTOA disabled from performing the duties of his position as a result of using alcohol will be dismissed subject to reinstatement provided he successfully cooperates with a similar counseling service maintained by MaBSTOA.

WHEREFORE, the defendants, New York City Transit Authority, William J. Ronan, William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, William A. Shea, Eben W. Pyne, Leonard Braun, Justin N. Feldman, Donald H. Elliott, Frederic B, Powers, Mortimer Gleeson, Wilbur B. McLaren and Louis Lanzetta, demand judgment dismissing the complaint, with costs and disbursements.

JOHN G. de ROOS
Attorney for Defendants,
New York City Transit Authority,
et al.
Office & P. O. Address
370 Jay Street
Brooklyn, N. Y. 11201
212 - 852-5000

V 2r

DISCIPLINARY DECISION

Date: August 15, 1972

Name of Employee: Carl A. Beazer

Title: Towerman

Pass No.: 053030

Department: Rapid Transit Operations - Div. A

After reviewing the record of the disciplinary hearing affecting the above named employee, I have adopted the recommendations made in the disciplinary procedure.

Executive Officer
for
Labor Relations and Personnel

FILE DISCIPLINE

Exhibit A

[illegible]

H. Evans — Employee
L. Peterson — File

November 26, 1971

Daniel Gutman, Hearing Referee

New York City Transit Authority

Hearing of Charges Preferred Against
Carl A. Beazer - 1165 E. 224th Street
Bronx, New York 10466
Towerman - Pass 033030 - Rapid Transit Operations - Div. A

DATES OF HEARING: November 3, 1971 and November 22, 1971

Charged with Misconduct in possessing and using drugs, as is more particularly set forth in Exhibit #1 of the transcript of the hearing, which is attached hereto and made a part hereof.

Towerman Beazer was present at the hearing. He was represented by the Legal Aid Society, Myran Schonfeld, Esq., of Counsel. The Authority was represented by John G. de Roos, Esq., Joseph Warde, Esq. and Edward Summers, Esq., of Counsel. Respondent admitted that he had received the charges preferred against him. He denied the charges.

Towerman Beazer is 36 years of age and has been in service since May 11, 1960.

RECOMMENDATION: It is RECOMMENDED that the charges be SUSTAINED.

Respondent is charged with Misconduct in that he violated Rule 11(b) of the Rules and Regulations Governing Employees in the Operation of the New York City Transit System.

Rule 11(b) provides as follows:

"Employees must not use, or have in their possession, narcotics, tranquilizers, drugs of the Amphetamine group or barbiturate derivatives or paraphernalia used to administer narcotics or barbiturate derivatives, except with the written permission of the Medical Director -- Chief Surgeon of the System."

FILE DISCIPLINE

Carl A. Blazer - 2

It is alleged in the Specification that prior to June 21, 1971, Respondent possessed and used narcotic drugs; that he was and is on a drug treatment program; and that he is medically incompetent to perform the duties of his title.

Respondent is a Towerman, having been appointed to that position on May 15, 1966.

It was conceded that Respondent was a "prior" user of heroin. (Stenographer's minutes, page 3).

It was established that Respondent is currently on the Methadone Maintenance Program of the Veterans Administration Hospital. (Stenographer's minutes pages 4, 14)

Credible evidence was offered by the Chief of the Methadone Maintenance Program at Veterans Administration Hospital to the effect that Respondent remained in the Hospital for a period of six weeks; that he was discharged from the in-patient phase (of treatment) to the out-patient phase, which requires him to come back three times a week to pick up methadone; (Stenographer's minutes, page 15) that he has never missed coming in and picking up his Methadone; and that he is known to be complying with the program because urine samples are taken twice a week and tested. (Stenographer's minutes page 16)

It therefore must be concluded that Respondent is adhering to the program. He was described as "an excellent patient". (Stenographer's minutes page 17)

FILE DISCIPLINE

M. E.

It is the Respondent's contention that because he is no longer a user of heroin and is on the Methadone Program, disciplinary discharge from employment is unwarranted and that it is in violation of the due process clause of the State and Federal Constitutions.

The able lawyers for the Respondent and for the Authority presented a comprehensive and detailed discussion of the factors upon which each of the parties relies. The case is a serious one, -- for the Authority, one of first impression. Accordingly, great latitude was extended in the admission of evidence in order that the record may be complete, even to the extent of exploring, by medical testimony, the position that make the Methadone Program a subject of some controversy. There was detailed, in behalf of the Respondent, the various steps which accompany or precede admission into the program, its claimed effects, the scientific bases upon which they rest, and the measure of success which is claimed for it.

The Authority's case was predicated upon reasons supporting its demand that Respondent be discharged from employment. It included testimony by physicians, -- one the Medical Director of the Authority, which highlighted the controversy over this drug.

Of prime significance was the testimony of the Executive Officer for Labor Relations and Personnel Wilbur B. McLaren in which he discussed in thorough detail, the problems and policies which lead the Authority to conclude that it should not be required to continue the Respondent in its employ.

FILE DISCIPLINE

Carl A. Bennett - 4

Of all the conflicting and opposing views expressed by the physicians who testified in behalf of either side, several facts stand out beyond dispute and must be deemed established. First, that the use of methadone creates a "block" against the desire or craving for heroin. Second, that this "block" continues only as long as the patient continues in the Methadone Program. Third, that there can be no assurance of continued interest in and adherence to the program. Fourth, that the "block" is limited to the desire for heroin, and there is, consequently, no assurance that the subject will not turn to other narcotic drugs or alcohol. Fifth, that the program has its "drop-outs".

It is, of course, recognized that employment in gainful occupation is important to the Methadone patient, as it is to all able bodied persons who are attempting re-adjustment and rehabilitation. We must, however, consider the milieu for fulfillment of this need in proper perspective. Employment should be sought out and provided, but not in the service of a public agency which has the responsibility of running a railroad with operations of the size and magnitude of the Transit Authority.

These matters, however, were fully discussed by the persons most qualified to explain them, and by the official who is responsible for the operations of the Authority's personnel. In my considered judgment, the policy of the Authority, as enunciated by Mr. Meltzer, is reasonable, and is necessary in the interest of the security of the Authority, and of public safety and confidence in the transit system.

M. Ex.

BEST COPY AVAILABLE

During the course of the hearing, decision was reserved on several objections, to evidence that was received. All such objections which were not ruled upon, are now over-ruled.

Having found charges sustained, I consulted this employee's disciplinary record. Said record is attached hereto and made a part hereof. Employed since May 11, 1960, Respondent has had 8 Cautions and 3 Warnings. Five of the violations involved were functional.

It is accordingly RECOMMENDED that the charges be SUSTAINED and that Respondent be DISMISSED from the service effective as of the close of business on November 26, 1971.

Daniel Gutman
Hearing Referee

175/TO:sac
DECISION:
RECOMMENDATION APPROVED:

Executive Officer for
Labor Relations and Personnel

M. B.

FILE DISCIPLINE

DATE: January 21, 1972

FROM: Daniel Gutman, Hearing Referee

TO: New York City Transit Authority

SUBJECT: Hearing of Charges Preferred Against
Jose Reyes - 12-11 31st Avenue
Astoria, New York 11102
Ventilation & Drainage Maintainer - Pass 741617
Mtce. of Way Dept.

DATE OF HEARING: January 20, 1972

Charged with Misconduct in using narcotic drugs without the permission of the Authority's Medical Director, as is more particularly set forth in Exhibit #1 of the transcript of the hearing, which is attached hereto and made a part hereof.

Ventilation and Drainage Maintainer Reyes was present at the hearing. He was represented by Community Action for Legal Services, Inc., Richard J. Hibler, Esq., of Counsel. The Authority was represented by John G. de Roos, Esq., Joseph Warde, Esq., of Counsel. Respondent admitted that he had received the charges preferred against him. He admitted the charges.

Ventilation and Drainage Maintainer Reyes is 26 years of age and has been in service since April 29, 1968.

RECOMMENDATION: It is RECOMMENDED that the charges herein be SUSTAINED.

The evidence proved the charges.

Having found charges sustained, I consulted this employee's disciplinary record. Said record is attached hereto and made a part hereof.

ROSTER CARD	✓
INDEX CARD	
SEN. CARD	
PASS	
TEMP. SEN.	
PAY BOOK	
ACCT. BOOK	✓
VAC. BOOK	
PROV. SEN.	
QUOTA BOOK	
CAL. No.	72

RECD PERSONNEL DEPT. 1972 OCT -5 AM 7:2

Exhibit B

Employed since April 29, 1968, Respondent has had 2 Departmental Hearings (1969, 1970).

It is accordingly RECOMMENDED that the charges be SUSTAINED and that Respondent be DISMISSED from the service effective as of the close of business on January 20, 1972.

Hearing Referee

FEB 2 1972

175/DG:emc
DECISION:
RECOMMENDATION APPROVED:

Executive Officer for
Labor Relations and Personnel

SEP 29 1972

Transcript of Proceedings, October 22, 1974 and February 12, 1975 (re Admission into Evidence of Plaintiffs' Exhibit 31)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER et al.,

Plaintiffs,

versus

NEW YORK CITY TRANSIT AUTHORITY,

Defendants.

72 Civil 5307

New York, N. Y.

October 22, 1974 - 10:30 a.m.

Before

HON. THOMAS P. GRIESA,

District Judge.

APPEARANCES:

HARLON L. DALTON, Esq.,
ERIC D. BALBER, Esq.,
MARK C. MORRILL, Esq.,
ELIZABETH B. DuBOIS, Esq., and
MICHAEL MELTSNER, Esq.,
Attorneys for Plaintiffs

JOHN G. deROOS, Esq.,
Attorney for Transit defendants
EDWARD W. SUMMERS, Esq., and
GILBERT T. DUNN, Esq., of Counsel

A. MICHAEL WEBER, Esq.,
Assistant Corporation Counsel, for Civil Service Commission

WILLIAM A. ROSKIN, Esq.,
Department of Personnel, Civil Service Commission

pm 1 merf 1

* * *

AFTERNOON SESSION

THE COURT: What is next?

MISS DUBOIS: We would like to clear up certain things for the record, and first, to indicate or to have stipulated as record of fact everything that is indicated in this document we submitted as a complilation of agreed to facts.

We would like it indicated for the record that the fact we have indicated or agree to or hereby do so stipulated facts of record. I guess for that purpose I should move admission of the compilation document for the record in this case because there is no other document, your Honor, that indicates the list of specific facts that have been agreed to.

THE COURT: Well, now, wasn't there a submission by you of proposed facts?

MISS DU BOIS: We submitted propositions, defendants submitted a response.

THE COURT: Where is the defendant's response?

MISS DU BOIS: Excuse me? We submitted a proposed document. The defendant then responded number by number. We then replied number by number, but none of those three documents, your Honor, indicates the agreement to that blank.

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In addition to that since our third submission we have made a few additional agreements, and what this document reflects is the extent -- also we now have the disposition. What this document reflects is the extent to which we in the city have agreed to certain things, the extent to which we and the Transit Authority have agreed to certain things. There are four corrections, two of which I would like to make which I will indicate that we have now agreed to with the Transit Authority and with the city, and Mr. Ruskin may have one or two others for the city, but that -- but at that point what is in here and only what is in here are the agreed to facts. None of the rest of it.

What is in here as an agreed to fact is the only comprehensive compilation of those, and there is nothing else that would serve that purpose.

THE COURT: Well, it would obviously be helpful if we could take this one document with any minor corrections that Miss DuBois says now. If the defendants could state that this is an accurate representation of the items agreed upon, it is a document that I can certainly use, and I assume the defendants have gone over it.

MR. SUMMERS: To the extent that it reflects any agreement made by us, of course, we certainly have no

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objection to --

THE COURT: You say to the extent, it is just a matter of accuracy. Is it accurate?

MR. SUMMERS: I haven't examined it line by line but I have reason to believe that it probably is and I will accept the fact that it is accurate, however, it is full of insertions made by the plaintiffs as to what they consider to be the fact which we have not agreed to.

THE COURT: Obviously. I think that is plain on its face, and the only -- my memory of the document is that it does indeed specifically indicate the things that the defendants have agreed to and the things they have not agreed to or on which they haven't taken any position, and the only request upon you now is to confirm that the things specifically stated to have been agreed upon were in fact agreed upon, and I take it, subject to possible correction, which you certainly can do, that is the fact, right?

MR. SUMMERS: Yes. I will accept that, your Honor.

THE COURT: Now, how about the city defendant?

MR. RUSKIN: We would accept that on the same basis. As Miss DuBois indicated I have one caveat to that related to item 24 on page 31, and except for

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that caveat, we would do so. I would like to make the additional, if I may, your Honor, caveat that Miss Gold who has been intimately involved working with plaintiff's counsel in the preparation of this document has to my knowledge not seen the final version in this form and so just having a chance of looking it over, which I am certain it is an accurate representation of their agreement, and giving to you any corrections she may pick up, it is fair to say that we would stipulate to it.

THE COURT: I think that's safe, and Mrs. Gold has some corrections, that can be made.

MR. SUMMERS: Your Honor, since this is culled from other documents, would it help the Court if the other documents were also introduced in evidence with this particular document for reference purposes.

MISS DU BOIS: I think they should be. I would agree with that, your Honor, because there are certain facts as to which there isn't agreement but there is substantial concessions on both sides or admissions, and I think for the benefit of both parties that we would all like the three documents that we previously submitted to be part of the record of this case.

I believe that both the TAS response and our reply to that were already filed, our initial proposed findings

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were never filed but I have a copy here for the Court.

THE COURT: Well, let's start by marking the compilation for identification.

We filed two copies. Can he mark one of those as Plaintiff's Exhibit 31.

(Plaintiff's Exhibit 31 marked for identification.)

MISS DU BOIS: Shall I now, your Honor, make the four corrections we have agreed to with the parties?

THE COURT: Yes.

MISS DU BOIS: On page 8 of that document, with reference to the proposed fact 15, it is my understanding that the Transit Authority now agrees to add the following statement, that in fact the medical director has not ever given permission to an employee to use methadone. This was in reference to Mr. Summers and Mr. Morrill's telephone conversation.

MR. DUNN: What page?

MR. BALBER: Page 7.

MR. SUMMERS: Yes, we agreed to that subject to possibly the medical director finding an acceptance somewhere, but that is my knowledge that he has not given permission to anyone to use methadone.

MISS DU BOIS: In other words, your Honor, on page

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7 toward the bottom of the page, we have the last proposed finding. We say: This Defendant TA has admitted that -- and there has been a paragraph that begins with respect to employees. We are going to add at the end of that paragraph: "In fact the medical director has not ever given permission to an employee to use methadone."

THE COURT: In fact the medical director has not ever --

MISS DU BOIS: Given permission to an employee to use methadone.

THE COURT: Okay. What's the next point?

MISS DU BOIS: Page 15, proposed fact No. 16. Proposed fact No. 16, your Honor, relates to the drug policy and the issue is whether the drug policy applies to all TA positions. The Transit Authority -- it is the very middle of the page, "we indicate that the Transit Authority previously admitted, "These policies apply to all positions in the TA."

THE COURT: Page what?

MISS DU BOIS: Page 15, in the middle.

THE COURT: I see.

MISS DU BOIS: Just about the middle of the page. The quoted phrase.

THE COURT: Right.

merf 7

MISS DU BOIS: It is now my understanding that the Transit Authority will admit now what it admitted before that these policies apply to all positions in the TA.

MR. SUMMERS: I don't know that we ever said that it wasn't so. We denied it. This starts off while the TA now denies this, but --

THE COURT: Let's just bring it up to date.

MR. SUMMERS: The policy applies across the board, yes.

THE COURT: Well, then, you agree to 16, don't you? You agree to those first two paragraphs up at the top under the number 16? If you are going to agree that those policies apply, you must agree that those are the policies.

MR. SUMMERS: No, but we agree that the policy as it is, applies to all positions.

THE COURT: I see. I wasn't clear. In other words, whatever the policy is, we are talking about the application.

MR. SUMMERS: Right, your Honor.

THE COURT: What is it you agree to then?

MR. SUMMERS: What she has got quotes there.

THE COURT: "The TA drug policies apply."

Shall we say that?

merf 8

MR. SUMMERS: "Drug policies apply to all positions in the TA."

THE COURT: The TA drug policies apply to all positions in the TA. Is that okay?

MR. SUMMERS: Right.

Your Honor, I would like to say at this point, in case I have to bring the matter up later: If perchance some official might qualify that, I would not want to be bound by what is here now, although this is my best understanding of what the situation is. It is subject to the --

THE COURT: Well, I think if there is a reason to depart from some blanket statement, why, I think we would let you depart from it.

In other words, if your policy in fact is softer or less general than it appears, why, that would be -- I think that could be adjusted.

MR. SUMMERS: Okay.

THE COURT: I am a little worried about using this Exhibit 31. Now, Exhibit 31 was very helpful to me, and in fact I want to thank everybody for the effort they made in the pretrial, but obviously everybody did a lot of work in trying to agree and narrow the issues, which I appreciate very much.

This Exhibit 31 seems to me to be a good statement

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of how far you did get and how far you didn't get in the process of growing. But to take it as -- well, right now it is a narrative, and it has a lot of material in it besides agreed facts.

MISS DU BOIS: Right, your Honor.

THE COURT: And it has material about what you say the evidence shows, what you say admissions were and so forth, even though maybe informally agreed upon now.

I think that --

MISS DU BOIS: I clearly want to separate out that, your Honor.

THE COURT: I think what you better do, and I think it is worth the effort, is to take the items that have in fact been agreed upon and put those in a separate document and that will be considered a stipulation.

MISS DU BOIS: We will be happy to do that. I didn't want to waste time at trial. I wanted your assurance and the assurance of the defendants that these are agreed to. We are happy to do another document.

THE COURT: Because there are some -- I don't want confusion -- there apparently are things that you feel the Transit Authority conceded sometimes by way of a deposition --

MISS DU BOIS: All I am asking them now is to say

merf 10

clearly that we are now agreed to the following. Then beyond that, there are places I realize where we say the Transit Authority has admitted in sworn testimony, and I am not asking them to agree, obviously, to that. All I am asking is that it be of record that what we have indicated that we are agreed to, and they are all these single spaced finding type paragraphs and only the ones I say we have agreed to, we have, and we will be happy to prepare a separate document.

THE COURT: I think it should be prepared. I think if the substance of it is down now, but I think it would be more useful and clearer to anybody working with this to have it in a separate document.

MR. DUBIN: I want to make sure your Honor for trial I don't have to try to prove any of those things that are agreed to. There are only two more corrections.

Page 58, proposed finding No. 46, we should add to what the TA has agreed, as I understand it, the TA now agrees that, "In fact there have always been vacancies."

I am reading a new statement. In other words, we indicate what we proposed. There is then a paragraph saying the TA has agreed with the following exception. We say we propose a new finding. Saying that they are always sufficient vacancies for reassignment. It is my

merf 11 136

understanding that the Transit Authority while it won't quite agree with that language says it will agree that in fact there have always been vacancies.

THE COURT: Let's get that clear. You say on page 58 the TA has agreed to item 46 as set out at the beginning of the discussion with the following exception: "Transfer to a less sensitive or light duty position is only made where a vacancy is available."

You say plaintiffs do not agree to the above and have proposed finding instead: "There are sufficient vacancies on a regular basis to allow for the reassignment of persons suffering from diabetes, epilepsy or heart disease to light duty positions."

Now, as I understand it, you are willing to go along with the TA's exception provided we add a second sentence which you --

MISS DU BOIS: We aren't really, your Honor. It is our understanding that the policy is no one would be fired, period.

THE COURT: I don't know what we are using and what we aren't using.

MISS DU BOIS: I think all we are trying to add is an additional admission by the Transit Authority, I guess, which is only a partial admission of what we claim, that

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they will admit that in fact there have always been vacancies.

THE COURT: Where do we put that language?

MISS DU BOIS: I guess we could put it at the end, where he says the TA has agreed with the following exception, we then have a sentence, after the sentence that ends, "Available" we could say, "In fact there have always been vacancies."

THE COURT: But you don't agree with it, so where are we?

MR. BALBER: We do agree.

MR. SUMMERS: Your Honor, may I put it in a different way.

THE COURT: All right.

MR. SUMMERS: You see, this language is here, "Where vacancies available," because that is one of the working conditions applicable to operating and maintenance personnel and it is a part of our union contract. We don't guarantee anybody a reassignment.

Now, all I can say is that to the best of my knowledge, whenever a situation arose that a disabled individual needed reassignment from his working title, a place was found for him. That's a different thing from saying vacancies are always available.

MISS DU BOIS: Let me correct myself.

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THE COURT: Okay.

MISS DU BOIS: We will accept their exception. In other words, if their thing reads transfer to sensitive or light duty position is only made where vacancy is available, in fact there have always been vacancies, we agree to that.

MR. SUMMERS: I prefer to say in fact where an assignment was necessary, the assignment was made, not that the vacancies --

THE COURT: That's a fine point.

MR. SUMMERS: It is important to us.

THE COURT: To me that's, it is not any great difference as far as the plaintiff's case. So let's say -- what's your language, Mr. Summers?

MR. SUMMERS: Whenever or wherever an assignment was indicated, the assignment was made.

THE COURT: All right, whenever an assignment --

MR. SUMMERS: Reassignment probably.

THE COURT: -- reassignment --

MR. SUMMERS: -- was indicated as a result of a disability.

THE COURT: -- was indicated.

MR. SUMMERS: Medically indicated.

THE COURT: Indicated medically, such reassignment was able to be made.

merf 14 139

Right?

MR. SUMMERS: Right.

Okay, what's the last?

MISS DU BOIS: The last correction on page 54, your Honor, sort of in the middle of the page we say the industry has agreed only that. In line 2, the city would like to insert, maintain on methadone conducted and then the insert is by Department of Personnel.

THE COURT: After the word "conducted"?

MISS DU BOIS: Right. And at the end of the next paragraph, the city would like to delete the last sentence.

THE COURT: "Such a study has not in fact been commenced."

MISS DU BOIS: Right.

And I believe Mr. Ruskin has one other thing.

MR. RUSKIN: YOur Honor, on page 31, line 24, the last paragraph beginning with the word, "Accordingly," has a statement that persons who participate in those programs," and then you may pick up, "are fully eligible for employment in all positions in the major agency."

We are not in a position to agree that such individuals are eligible for all positions. There are some 3500 classified titles and we haven't done an analysis of all 3500. So I think it would be more appropriate

merf 15 140

to say if virtually all positions in the mayoral agencies.

THE COURT: In virtually."

MISS DU BOIS: Those that you know of now?

MR. RUSKIN: Those that we know of.

THE COURT: Not conducive to any prejudicial degree.

Anything else?

MR. DUNN: What was that?

THE COURT: Add "Virtually" before all.

MISS DU BOIS: Your Honor, one question -- well, two small problems for the Court that I would just like to ask. On page 76, proposed finding 71-A. This was the rational breakdown sent to us in a letter that we have marked as Plaintiff's Exhibit 20 by Dr. Trigg, the Transit Authority's consultant. We would like to avoid having to take up trial time by calling Dr. Trigg and getting him to say that these are his statistics, the statistics he gave us. and what I wonder is whether the Transit Authority can't stipulate that those are accurate so that we don't have to prove that at trial.

THE COURT: How about 71-A?

MR. SUMMERS: I have no basis, your Honor, for either agreeing or disagreeing with the figure. I think there is testimony by our doctor that the majority at

least of the persons that referred to Dr. Trigg who were black or other minority studies, however, we will stipulate if the plaintiffs have the letter that he has so indicated.

THE COURT: Will you stipulate that if he were called he would so testify?

MR. SUMMERS: Correct, yes.

Without conceding the truth.

MISS DU BOIS: If called would so testify. Okay, thank you, your Honor.

THE COURT: How did we change the document here, page 76? Why don't we say at the end of where it says, "The TA has not indicated its position except that the TA agrees that Dr. Trigg would testify to the contents of 71-A." Is that all right?

MISS DU BOIS: That's all right with us, your Honor, if that's the equivalent for the record of your Honor of his testimony.

THE COURT: Sure.

Is that okay, Mr. Summers?

MR. SUMMERS: Yes, sir.

MISS DU BOIS: On 71-B, can we get either a stipulation or have the Court take judicial notice that those are the statistics, simply the statistic --

merf 17 142

THE COURT: I tell you what, I don't want to really sit here and work through --

MISS DU BOIS: That's the last one, your Honor. I'm sorry.

THE COURT: Can you go along with 71-B or not?

MR. SUMMERS: Well, again, your Honor, they must have some backup material, including the federal reports, whatever they are taken from, if that's what they report, that's what they report. I am not going to quarrel with it. If they want to offer in evidence such evidence that's all right with me, but I have no basis for agreeing as to the actual percentage they are going by.

MISS DU BOIS: It is the census data.

MR. SUMMERS: Give it to us.

THE COURT: You will look at it.

MR. SUMMERS: Yes.

THE COURT: So I would say this. Everything that can be stipulated is a help to every one of us. I did notice in going through here that there were instances where it did seem to me, Mr. Summers, that there were things that you should stipulate to that you hadn't done so, and I am talking about instances of this kind where it appeared that there were pretty solid admissions in the discovery materials of the defendants. A deposition by

merf 18 143

an authoritative official or an answer to interrogatory -- I have one thing, one other thing in mind, there were things pecularly within the knowledge of the Civil Service Commission. They have admitted to them and it would seem to me realistic to have the TA go along. Now all I am asking, and I am not pointing any fingers or really criticizing any way. I just would ask you to take another look at this document and see if there are indeed some other things you could stipulate to.

MR. SUMMERS: I will be glad to do that. But may I say in self-defense --

THE COURT: Don't say it, because I am not attacking.

MR. SUMMERS: That's right, but you know, why don't we go along with something that was said in the deposition, sure, but give us what the witness said, don't give it a twist, you know. This is what they do, they twist it.

THE COURT: If they are twisting don't go along with it.

MR. SUMMERS: That's why we are not doing it.

THE COURT: Okay, don't go along. That's up to you gentlemen.

Okay, can we go ahead?

MISS DU BOIS: Can I move a couple of other things just into evidence? The admission into evidence of

merf 13a 143a

plaintiff's proposed findings which I just handed up to you.

who has a history of prior heroin use or

wcs 1202

CARL A. BEAZER, et al

vs. 72 Civ. 5307

NEW YORK CITY TRANSIT AUTHORITY.

Before:

HON. THOMAS P. GRIESA,

District Judge.

New York, February 12, 1975;
10.00 o'clock a. m.

wc 68 [dbl]

THE COURT: Yes. Do you have anything else to offer?

MS. DuBOIS: Yes, sir. We have the following: First, we would like to clear up Exhibit 31, which is the black book. As your Honor knows, on the day that we offered that in evidence, October 22, the defendants agreed on the record that the statements contained in Exhibit 31 to the extent of Exhibit 31 saying they had agreed to them, they agreed to them.

THE COURT: I will receive Exhibit 31 to the extent that it states stipulated facts.

MS. DuBOIS: Your Honor, there were certain corrections and additions to Exhibit 31. We have prepared three -page document which contains simply an update to a Exhibit 31, which I would ask to be received as a supplement to that.

THE COURT: This is just a memorandum. I will take the memorandum. It does not have to go into evidence.

Anything else?

I am marking 31A in evidence, subject to simply the other parts of the record, obviously.

[illegible] Your Honor, my question is that

Compilation of the Agreed to and Contested Facts Together with Plaintiffs' Submission Regarding Documentation Contained in the Record and Update Thereto (Plaintiffs' Exhibits 31 and 31A)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER, et al., Plaintiffs, -against- NEW YORK CITY TRANSIT AUTHORITY, et al., Defendants.	:	72 Civ. 5307 (T.P.G.)

COMPILATION OF THE AGREED TO AND CONTESTED FACTS TOGETHER WITH PLAINTIFFS' SUBMISSIONS REGARDING DOCUMENTATION CONTAINED IN THE RECORD

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- X

CARL A. BEAZER, et al., :

Plaintiffs, :

-against- :

NEW YORK CITY TRANSIT AUTHORITY, et al., :

Defendants. :

- X

72 Civ. 5307

(T.P.G.)

COMPILATION OF THE AGREED TO AND CONTESTED FACTS
TOGETHER WITH PLAINTIFFS' SUBMISSIONS
REGARDING DOCUMENTATION CONTAINED IN THE RECORD

Plaintiffs will set forth herein the parties' proposed findings regarding the facts relevant to this case, numbered in accordance with the documents previously submitted to the Court, together with an indication with respect to each as to:

1) whether the parties have agreed and:

a) if so, the language upon which they have agreed;

b) if not, the respective parties' positions as contained in the proposed findings and responses thereto submitted to the Court to date;

2) the evidence supporting plaintiffs' position contained in the proceedings to date including specifically the depositions, defendants' answers to plaintiffs' interrogatories, documents produced in response to plaintiffs'

requests for production of documents, and transcripts of previous proceedings.

Plaintiffs submit herewith in separate volumes:

1) The depositions, with those portions plaintiffs wish to offer into evidence bracketed and underlined in red; and those portions of which defendants wish to rely underlined in blue;

2) The documents we wish to offer into evidence as exhibits, numbered in order. (These documents shall be referred to herein as PX ___.) (Included among these documents are the interrogatories and responses thereto.)

Except as indicated below, the City defendants have agreed to all plaintiffs' proposed findings insofar as they affect the City.

I. THE CLASS

Plaintiffs and defendant TA are agreed that, as discussed at the Court Conference of October 4, 1974, final definition of the class will be held in abeyance pending the trial.

Plaintiffs' agreement is premised on their understanding that they will not be limited in their proof by the previous definition of the class, and will be permitted to present proof relevant to the defendant Transit Authority's policy as set forth in Plaintiffs' proposed findings of fact No. 15.

Plaintiffs have proposed the following additional

II. DEFENDANTS

Plaintiffs and defendant TA are agreed on the following findings:

2. Defendant New York City Transit Authority* (hereinafter "TA") exists pursuant to the laws of the State of New York as a public benefit corporation performing a governmental function. It has as its purpose, inter alia, the operation of the subway system and certain bus lines in New York City.

3. Defendant Manhattan and Bronx Surface Transit Operating Authority (hereinafter "MaBSTOA") exists pursuant to the laws of the State of New York as a public benefit corporation and subsidiary corporation of defendant New York City Transit Authority. It has as its purpose, inter alia, the operation of certain bus lines in New York City.

4. Defendant William J. Ronan served as a member of the New York City Transit Authority, as a director of Manhattan and Bronx Surface Transit Operating Authority, and as the chairman of the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority, from March, 1968 until May, 1974. During that period, defendant Ronan also served as chief executive officer of both the TA and MaBSTOA and, as part of his duties in those positions, bore overall responsibility for the appointment, discipline and removal of all employees. Defendant Ronan personally reviewed the policy with respect to the employment of former drug abusers and approved its continuance.

5. Defendant David Yunich is, and has been since May, 1974, defendant William J. Ronan's successor in office. As such, he now bears overall responsibility for the appointment, discipline and removal of all TA employees as well as for continuance of the policy with respect to the employment of former drug abusers.

---

* Except as specifically differentiated, the facts stated herein with respect to the defendant New York City Transit Authority are true also with respect to the defendant Manhattan and Bronx Surface Transit Operating Authority.

6. Defendants William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, Constantine Sidamon-Eristoff, Eben W. Pyne, Leonard Braun, Justin N. Feldman, Donald H. Elliott, Edwin G. Michaelian and Mortimer Gleeson are all members of the New York City Transit Authority and directors of the Manhattan and Bronx Surface Transit Operating Authority. Together with defendant Yunich they constitute all of the New York City Transit Authority's current members and all of the Manhattan and Bronx Surface Transit Operating Authority's current directors. As such, they meet at least monthly to consider and determine policy matters for the TA and MaBSTOA. Acting individually, any of the above-named defendants would have the power to initiate a review of the policy with respect to the employment of former drug abusers, and a majority of them acting together would have the power to modify the policy.

7. Defendants Frederic B. Powers and William A. Shea, who have been succeeded in office by Edwin B. Michaelian and Constantine Sidamon-Eristoff during the pendency of this lawsuit, served as members of the New York City Transit Authority and as directors of the Manhattan and Bronx Surface Transit Operating Authority at the time this lawsuit was filed.

8. Defendant Wilbur B. McLaren is Executive Officer in charge of labor relations and personnel for the TA and has served in that position since 1969. As part of the duties of his position McLaren bears operational responsibility for the appointment, discipline and removal of all TA employees, in accordance with the New York Civil Service Law and the rules and regulations of the New York Civil Service Commission and the rules and regulations of the TA. McLaren is consulted with respect to the formulation and revision of policies relating to the appointment, discipline and removal of TA employees, when such formulation or revision may occur.

With respect to this para. 8, plaintiffs proposed in addition the following finding, with which the TA has not agreed:

> Defendant McLaren has personally approved the TA's policy with respect to the employment of former drug abusers and he has been responsible for its administration.

In support of this finding plaintiffs submit McLaren Dep. I TR. 22* ["I probably played a major role" in formulating or continuing the TA's present drug policy]; see generally portions of McLaren Dep. TR. I and II submitted by plaintiffs.

Plaintiffs and defendant TA are agreed on the following findings:

9. Dr. Louis Lanzetta is medical director of the TA and has served in that position since 1970. As part of the duties of his position, Dr. Lanzetta is responsible for the administration of the policy with respect to the employment of former drug abusers insofar as it requires an assessment of the drug abuse histories of specific persons. Dr. Lanzetta has approved the policy and recommended to defendant McLaren that it be continued.

---

* When there is more than one deposition transcript of a single witness they are designated herein as "I" or "II".

10. The appointment, promotion and in certain instances the continuance of the service of all TA employees is governed by the provisions of the Civil Service Law of the State of New York and the Rules of the City Civil Service Commission. Rules of the TA regulating the conduct of its employees are adopted and promulgated by the Board which constitutes the TA. Defendant New York City Civil Service Commission is responsible, pursuant to the laws of the New York State, for the promulgation and enforcement of rules governing the appointment, promotion and in certain instances the continuance of employment of all TA employees. The Civil Service Commission may hear appeals by applicants for employment who are medically disqualified by the TA, which acts for the Department of Personnel in conducting medical examinations of eligibles certified to the TA by the Department. It may also hear appeals pursuant to Section 76 of the Civil Service Law by employees subjected to discipline by the TA.

11. Defendant New York City Department of Personnel prepares and administers written exams and promulgates medical standards for employment with the TA.

12. Defendant Harry I. Bronstein, who has been succeeded in office by Alphonse E. D'Ambrose on an acting basis, served as a member and as chairman of the Civil Service Commission, and as director of the Personnel Department, at the time of commencement of this lawsuit. By virtue of succeeding to these titles, Alphonse E. D'Ambrose is now a defendant in this lawsuit.

13. Defendants Josephine L. Gambino and James W. Smith are members of the Civil Service Commission. Together with defendant D'Ambrose they constitute the Civil Service Commission's entire membership.

14. Defendant David Stadtmauer, who was succeeded by Josephine L. Gambino during the pendency of this lawsuit, was a member of the Civil Service Commission at the time this lawsuit was commenced.

III. THE DRUG POLICY

A. GENERALLY

15. Plaintiffs have asserted that defendant TA's drug policy is as follows:

> It is the present policy of the New York City Transit Authority to discharge from its employ and to refuse to hire any person known to have ever used heroin, even if such a person was never an addict or is currently a drug-free former addict or is a former heroin addict successfully participating in a duly licensed and authorized methadone maintenance treatment program. (Plaintiffs' Proposed finding No. 15)

Defendant TA has admitted this only in part.

Thus defendant TA has admitted that:

> With respect to employees it is the policy of the TA to dismiss employees found to have violated Rule 11b of the TA's Rules and Regulations prohibiting the use or possession of narcotics, including methadone and other specified drugs, by employees without the written approval of the Medical Director.

This leaves unclear whether the rule against methadone use is absolute since it does not indicate whether approval can ever be obtained for its use. Moreover the TA has denied that current employees are automatically

dismissed solely because of a history of drug abuse (their No. 15, para. 3). Accordingly, plaintiffs submitted the following proposed additional finding:

> It is an absolute policy of the TA that the Medical Director not give employees permission to use methadone prescribed by a physician pursuant to participation in a duly licensed and authorized methadone maintenance treatment program and in fact the Medical Director has not ever given permission to an employee to use methadone. The administration and enforcement of Rule 11b therefore uniformly results in the termination from TA employment of persons whom the TA discovers to be participating in methadone maintenance treatment programs. Drug free former heroin users in the employ of the TA whose prior history of drug abuse and/or treatment is discovered by the TA are deemed by the TA to have violated Rule 11b and are immediately terminated from TA employment. Such persons are terminated from employment regardless of whether or not their prior drug use and/or treatment occurred during a period of employment with the TA, and even if such persons were never addicts, but were only occasional drug users.

The TA has admitted that:

> with respect to applicants for employment, it is the policy of the TA to refuse employment to applicants who are presently using narcotic or other dangerous drugs, including methadone. (See also Lanzetta Dep. TR 41, 45-46, 51, 52-53.)

They again deny that applicants are automatically rejected solely because of a history of drug abuse (their No. 15, para. 3). Accordingly, plaintiffs submitted the following proposed additional finding:

> When taken pursuant to participating in a duly licensed and authorized methadone maintenance treatment program, methadone is a pharmacologically safe drug, maintenance on which constitutes a recognized and effective treatment for heroin addiction. (See No. 58-66 infra.) With respect to applicants for employment, it is the policy

> of the TA to refuse employment to any person who has a history of prior heroin use or participation in a duly licensed methadone maintenance treatment program, even if such person was never an addict or is currently a drug-free former addict.

Plaintiffs submit that defendant TA's admissions in the prior proceedings in this case leave absolutely no doubt that the TA's drug policy is as set forth in plaintiffs' proposed findings.

Specifically, it is clear that the TA not only excludes all applicants who are maintained on methadone (admitted) but, with respect to the apparent points of dispute, the TA:

(1) Dismisses all current employees who use methadone;

(2) Denies employment to all applicants and dismisses all current employees who are discovered to have used either heroin or methadone in the past regardless of whether there is any indication of current usage, regardless of whether there is any indication of past addiction (as opposed to use) and regardless of any other individualized circumstance.

In support of these propositions plaintiffs submit the following:

TA response to Plaintiffs' Interrogatories (10/23/73) (PX 1):

#31 - "It is the present policy of the TA as it was of its predecessors not to employ or retain in its employment any person who is

presently using heroin or other narcotic drug or has a history of such usage."

#35 - Indicating "No" to the question whether any TA medical officer had ever given a TA employee permission to use methadone.

#36(b) - ". . . with respect to persons described as 'participating in methadone maintenance treatment programs,' the policy has always been not to employ or retain in employment persons who are participants in a narcotic rehabilitation program or who have ceased participation in any such program."

In a letter, dated April 10, 1972, addressed to the Chairman of the New York State Temporary Commission to Evaluate the Drug Laws, defendant William Ronan, then chairman of the TA, stated that:

> "It is the present policy of the Transit Authority not to employ or to retain those individuals who are participants in a narcotic rehabilitation program. We do not distinguish between those who have completed any rehabilitation program or are now on a program." (PX 6, pp. 2-3)

The accuracy and current validity of Ronan's statements have been confirmed by McLaren. Dep. TR I, 42-44.

Ronan specifically reaffirmed the accuracy of the statement contained in the TA's Response to Plaintiffs' Interrogatories to the effect that the TA policy was "not to

employ or retain in their employ persons who are or have been addicted to heroin, notwithstanding their present or past participation in a methadone maintenance program." Ronan Dep. TR 3-4. And, to ensure against any possible misunderstanding, plaintiffs' counsel pressed the matter again and again received an unambiguous answer:

> "Q. At the beginning of this deposition I read to you a section from your interrogatory. I want to clarify something so that I am sure we are both talking about the same thing. It is our understanding, and it is our understanding from the statement, that the policy of the Transit Authority while you were there was not to employ persons who were addicted to drugs or had been addicted to drugs.
>
> A. That was a long standing policy continued, yes.
>
> Q. Present as well as past?
>
> A. Yes."
>
> (Ronan Dep. TR 8)

Yunich testified to the same effect as Ronan and his testimony made clear that the policy applied to all those who had formerly used drugs whether or not they had been addicted:

> "Q. Previously in the law suit, Mr. Yunich, we served some interrogatories on the Transit Authority, the defendants in this case, and one of the questions we asked, and I am referring to question 31 in Plaintiffs' interrogatory directed to the Transit Authority defendants, gives a detailed description of the Transit Authority's present employment policy respecting former heroin addicts who are presently drug free. We later agreed with Counsel that the word "former heroin addicts" be defined as former heroin users.
>
> In response to that question, it was stated, and I am quoting again: It is the present policy of the Authority, as it was of its predecessors, not to employ or retain in its employment any person who is presently using heroin, or other narcotic drug, or has a history of such usage.

"The question went on and referred to a Transit Authority rule book. Is that your understanding of the Transit Authority's current policy respecting employment of former heroin users?

A. Yes."

(Yunich Dep. TR 5-6)

With respect to present employees the testimony of Dr. Lanzetta, Medical Director of the TA, makes clear that any TA employee is dismissed if there is an indication of present use of methadone. Lanzetta Dep. TR 12-18, 51.

Lanzetta's testimony further demonstrates that employees are dismissed if it is discovered they have a history of prior drug use whether or not there is evidence of present drug use. This Dr. Lanzetta testified that "if I find track marks I will immediately come to a conclusion. . .." (Lanzetta Dep. TR 14) (He also testified that he would send such a person to Dr. Trigg for his "opinion" if he, Lanzetta, found no definite physical findings of drug abuse, but Dr. Trigg's testimony makes clear that he was to give an opinion solely as to whether the employee had been or was currently a drug user. See No. 27 infra. Other testimony demonstrates that if Dr. Trigg thought the person had been or was a drug user he was automatically dismissed. See No. 27, infra.) Moreover Dr. Lanzetta's testimony makes it clear that the track marks are sufficient evidence for him to require dismissal and that the only reason he sends the employee to Dr. Trigg is because of an agreement with the union that a consultation with Dr. Trigg is required unless evidence

of methadone or illicit drug use is found in the urine. Lanzetta Dep. TR 15, 18. Thus at a subsequent point in the deposition Dr. Lanzetta specifically testified that if he found a track mark on a TA employee, the person would be disqualified from employment in any TA position regardless of how long ago the person said he had used drugs because:

> ". . . I don't know when he used it last and he is a risk as far as I am concerned. . . ." (Lanzetta Dep. TR 57)

With respect to applicants, Lanzetta also made absolutely clear in his testimony that evidence of prior illicit drug use would disqualify a person for TA employment even if there was no indication the person was presently using drugs and regardless of whether the person had ever been addicted and of how long ago the prior drug use occurred. See generally Lanzetta Dep. TR 41-43. Thus, for example, Dr. Lanzetta testified in connection with a discussion of drug use ten years prior to the time of application as follows:

> Q. What if somebody had used drugs for a very brief period of time and you found no physical symptoms but you did discover it in the hospital records?
>
> A. Now wait, are you talking about a drug that had been prescribed by a physician?
>
> Q. No, an illegal drug.
>
> A. I would not accept him."
> (Lanzetta Dep. TR 43)

Lanzetta specifically testified that persons with clean urines but bearing track marks were absolutely disqualified from

employment. See Lanzetta Dep. TR 54-55.* Thus, he stated:

> "Q. But, confining ourselves to the pre-employment physical, if you find a track mark, does that person ever get a job, does anybody with a track mark ever get a job?
>
> A. It is a risk involved.
>
> Q. Just does he or does he not?
>
> A. No, he doesn't get it because there is a risk involved. I do not know when this man stopped using drugs."
>
> (Lanzetta Dep. TR 55)

(He had previously testified that if a person had used drugs ten years ago "I would find track marks there for the rest of their life". Lanzetta Dep. TR 42)

In response to an investigation conducted by the United States Equal Employment Opportunity Commission, Gilbert T. Dunn, Counsel for the TA defendants herein, stated in a letter dated March 22, 1973 that "the [Transit] Authority does not have persons in its employ who are known to have a history of drug abuse." See PX 3.

The above-cited testimony regarding the TA drug policy makes it absolutely clear that medical permission would never be given to an employee to use methadone, under Rule 11b. See also TA Disciplinary Hearing of Plaintiff Reyes TR (PX 4 17-18. (The policy of the TA Medical Director is not to give permission to a TA employee to take methadone under any circumstances).

---

* Lanzetta testified that in the pre-employment physical applicants are checked for track marks, in addition to being given drug-detection urinalyses. Lanzetta Dep. TR 27.

See generally on absolute disqualification for "any kind of narcotic history or of drugs" - Lanzetta Dep. TR 95. See also material cited in support of No. 27, infra.

16. Plaintiffs have submitted the following proposed findings to which defendant TA has not agreed:

> The TA drug policy is administered irrespective of a person's individual ability to perform on the job, record of adherence to a drug treatment program, length of time since detoxification from heroin or any other criteria relevant to employability. (See generally No. 15, supra.)
>
> The drug policy applies to all positions of TA employment including executive, clerical and other positions that do not involve the technical or mechanical operation of trains of buses.

While the TA now denies this, plaintiffs submit that it must be bound by the following admission made in its proposed findings of fact dated September 26, 1974 (No. 20): "These policies apply to all positions in the TA."

In addition, plaintiffs have submitted the following finding:

> The TA drug policy is applied to both TA titles and to city-wide titles, and to large numbers of positions that do not significantly involve the safety of the riding public, the safety of other TA employees, or the safety of the employee involved.

Material documenting the proposition that the TA drug policy applies to all TA positions of employment, including city-wide titles, appears in No. 24, infra. Material documenting the variety of jobs within the TA and the fact that a large proportion are not particularly safety-sensitive is cited in Nos. 25 and 30, infra.

17. Plaintiffs submitted the following proposed finding with which the TA did not agree:

> Approximately 5% of the persons certified eligible for TA employment are rejected because it is discovered that they are drug-free former addicts or former heroin addicts successfully participating in duly licensed and authorized methadone maintenance programs.

The TA admitted in their response that about 4 1/2% were disqualified but limited this to persons disqualified for present drug use. Plaintiffs submit that the TA must be bound by the following admission made in its proposed findings of fact dated September 26, 1974, which its counsel reaffirmed both in discussions with plaintiffs on October 3, 1974, and during a conference with the Court on October 4, 1974:

> About 4 1/2 % of the persons certified to the TA by the Civil Service Commission of the City of New York as eligible for employment are not employed because of present illicit drug use or a history of such use. (TA proposed finding No. 21 of September 26, 1974 proposed findings).

General support for approximate percentages of: employees picked up as drug abusers (McLaren Dep. II TR 154-55); applicants (McLaren Dep. I TR 95, 105).

18. Plaintiffs and the TA are agreed on the following finding:

> The TA has never studied the requirements of particular TA jobs or groups of jobs to determine the present ability of persons with a prior history of drug abuse, including persons participating in methadone maintenance programs, to perform the various jobs.

Plaintiffs have proposed the following additional finding to which the City defendants have agreed and as to which the TA has not indicated its position:

> No other person or organization including the New York City Civil Service Commission or the New York City Department of Personnel has ever studied the requirements of particular TA jobs or groups of jobs specifically to determine the present ability of persons with a prior history of drug abuse, including persons participating in methadone maintenance treatment programs, to perform the various jobs.

In support of these findings plaintiffs submit:

-- TA's Answers to Plaintiffs' Interrogatories (Oct. 23, 1973) (PX 1) Nos. 49-51 (indicating that there are no such studies);

-- Unger Dep. TR 68, 73;

-- Shanen Dep. TR 43-44; 64-65.

19. Plaintiffs and the TA are agreed on the following finding:

> The TA has not made any studies to determine the job performance of TA employees with prior histories of drug abuse, including employees participating in methadone maintenance programs.

In addition, plaintiffs have proposed the following finding to which the City defendants have agreed and as to which the TA has not indicated its position:

> No other person or organization, including the New York City Civil Service Commission or the New York City Department of Personnel

has made any studies to determine the job performance of TA employees with prior histories of drug abuse including employees participating in methadone maintenance treatment programs.

In support of these findings plaintiffs submit:

-- TA's Answers to Plaintiffs' Interrogatories (October 23, 1973) (PX 1) Nos. 49-51 (indicating that there are no such studies).

20. Plaintiffs have submitted the following proposed finding, to which the TA has not agreed:

> The job performance of individual rehabilitated heroin addicts has been assessed in the course of proceedings leading to their dismissal from the TA, and their job performance has been found to be fully competent.

In support, plaintiffs submit as an example the case of plaintiff Carl A. Beazer, as to whom the TA's Impartial Disciplinary Review Board made it clear that it was sustaining the Hearing Referee's recommendation of dismissal solely because it felt bound by the TA's clear policy regarding the employment of former drug abusers. Thus with respect to Beazer's record the Board said:

> "Carl A. Beazer has been with the Authority since May 11, 1960. During the approximately 12 years that he has been employed, he has compiled a good record. He started out as a Car Cleaner and worked his way up to Towerman. He has done his job well and has received relatively few cautions and warnings for the time that he has been employed." (PX 5)

is described in detail in Nos. 36-37 of the answers of City

21. Plaintiffs and the TA are agreed on the following findings:

The following physicians who are experts in the field of drug treatment were consulted by the TA with respect to the employability of persons with prior histories of drug abuse, including persons participating in methadone maintenance treatment programs:

a. Dr. Harvey Gollance, Director of the Beth Israel Medical Center, has told officers and employees of the TA, including defendant Louis Lanzetta, the Medical Director, and defendant Wilbur McLaren, the Executive Officer for Labor Relations and Personnel, that in his opinion some methadone maintenance treatment program participants are qualified to be TA employees in some positions.

(Dr. Lanzetta testified that he and Dr. Gollance had been at Dr. Trigg's office on a number of occasions to discuss the TA drug policy. Lanzetta Dep. TR 18, 19-20.)

b. Dr. Harold Trigg, Chief of the Methadone Maintenance and Drug Addiction Services at the Beth Israel Medical Center, Associate Professor of Clinical Psychiatry at Mt. Sinai School of Medicine, and special consultant to the TA on drug abuse, has told officers and employees of the TA including defendant Louis Lanzetta, the Medical Director, and defendant Wilbur McLaren, the Executive Officer for Personnel, that in his opinion some methadone maintenance treatment participants are qualified to be TA employees in some positions, and that he would be willing to screen methadone maintenance program participants to find persons suited for TA employment and help the TA devise a system to monitor the performance of these individuals. Dr. Trigg specifically recommended to the TA that it employ plaintiff Diaz.

(In support of this proposition 21b see also Trigg Dep. I TR 61-62; 83-85; Dep. II TR 47-50; Court Hearing April 4, 1974, TR 4)

(Dr. Lanzetta testified Trigg was "A darn good doctor. I think the world of him...." Lanzetta Dep. 22.)

(In support of finding #s 21(a) and #21(b) see Lanzetta Dep. TR TR 69-70.)

> c. Dr. Vincent Dole, Professor of Medicine at the Rockefeller University and Senior Physician to the Rockefeller University Hospital, has told officers and employees of the TA, including Louis Lanzetta, the Medical Director, and Wilbur McLaren, the Executive Officer for Labor Relations and Personnel, that in his opinion some methadone maintenance treatment program participants are qualified to be TA employees in some positions.
>
> d. In addition to the foregoing, officers and employees of the TA, including the defendant, Louis Lanzetta, the Medical Director, and the defendant, Wilbur McLaren, Executive Officer for Labor Relations and Personnel, met and conferred with representatives of therapeutic drug treatment programs including Phoenix House and Odyssey House, visited chemotherapeutic drug clinics, and conducted seminars at the TA at which, among others, the noted lay drug expert, Godfrey Cambridge, and representatives of medical schools, the New York City Police Department, the FBI, various drug centers, hospitals and methadone clinics were invited to participate.

In addition, plaintiffs have proposed the following findings to be inserted as part of paragraph 21(d) as to which the TA has not indicated its position:

> The seminars were not intended or designed to ascertain the feasibility or advisibility of effectuating a change in the TA's drug policy but were merely designed to educate TA personnel about the physical manifestations of actual illegal drug use. The overwhelming weight of advice received by the TA from physicians and lay experts was that many former heroin addicts, including participants in duly licensed and authorized methadone maintenance treatment programs, are fully qualified to be TA employees.

In support of these proposed additional findings, see generally Ex E to TA's Answers to Plaintiffs Interrogatories (October 23, 1973). The only references to the employability of former heroin addicts during the seminars were contained in presentations by Edgar Marchesini of the Metropolitan Life Insurance Co. and Conrad Mauge of the Addiction Research and Treatment Corp. Marchesini described a company policy of hiring former drug abusers and Mauge described the array of vocational rehabilitative services provided to former drug abusers in treatment. Ibid, "Report of Third Seminar on Alcoholism and Drug Abuse", "Fourth Seminar on Alcoholism and Drug Abuse".

Plaintiffs also proposed in their original submission the following findings:

> The TA has no reliable data with respect to the characteristics of drug-free former addicts or successful participants in duly licensed and authorized methadone maintenance treatment programs indicating that such persons would not be able satisfactorily to perform as TA employees in any TA position.
>
> The only physicians who are experts in the field of drug treatment and who have been consulted by the TA with respect to the employability of drug-free former addicts and successful participants in duly licensed and authorized methadone maintenance treatment programs have told the TA that such persons are fully qualified for TA employment.

Plaintiffs note further that the above two proposals have not been denied by the TA except as indicated in their

response to No. 21. Specifically, the TA has not asserted that any expert in the field of drug treatment, nor any of the persons referred to in their para. 21(d), has told the TA that drug-free former addicts or successful participants in duly licensed and authorized methadone maintenance treatment programs were not fully qualified for TA employment.

In support of plaintiffs' proposed finding that the TA has no reliable data justifying its drug policy plaintiffs submit the following.

In its answers to plaintiffs' interrogatories Nos. 49 and 50, the TA stated that it has no studies of either actual performance as TA employees or capabilities to perform the duties associated with TA employment of either drug-free former addicts or persons maintained on methadone. PX 1.

The testimony of Dr. Lanzetta, the TA's Medical Director, makes it clear that the TA did not base its policy disqualifying all methadone-maintained persons from employment on any rational assessment of the relevant data available but rather solely on the basis that methadone was a "narcotic." Lanzetta Dep. TR 46, 49. Thus in response to the question "How did it come to pass that Methadone was put on the list of unauthorized substances?", he testified:

> "It didn't have to be put on the list, it is a narcotic, it is all narcotics, unexplained substances, it is using a narcotic...."
> Dep. TR 49.

Lanzetta's testimony further shows that the present TA administration never even made an affirmative decision to adopt its present drug policy. It simply continued a policy of its

predecessors, and since that policy proscribed narcotics, methadone was automatically included in the proscription without consideration being given to the differences between methadone and other narcotics:

> "Q. Would you describe to me generally the the process by which the policy of not hiring and not retaining in your employ ex-addicts was formulated?
>
> A. I couldn't tell you because it was there, I mean the thing is, you bring up a subject that I think no one was aware of drug addicts until lately, I think maybe when I became medical director, and it was one of the standards you know, that drug addicts or barbituates or any dependent drugs, you would be disqualified.
>
> Q. Was there a policy on Methadone when you became medical director?
>
> A. Again, you bring up the word Methadone, it is a narcotic and as long as narcotics disqualify, Methadone would disqualify, it wouldn't have to be named Methadone, it is a narcotic."
> (Lanzetta Dep. TR 63-64)

See also Lanzetta Dep. TR 96: "the policy has been there right along and the question of adding methadone is just a question that it was a narcotic." See also Lanzetta Dep. TR 118-19.

Ronan similarly testified that the drug policy of the TA's predecessor organization had simply been continued and had never been reconsidered except with regard to its more effective implementation (specifically, through improving the adequacy of drug use detection tests). Ronan Dep. TR 6-7. Specifically regarding the methadone policy, Ronan testified that although methadone maintenance was first instituted on a major scale during his tenure as Chairman of the TA, there had been no consideration of revising the drug policy's exclusion

from employment of persons taking any "narcotics." Ronan Dep. TR 20. Ronan further testified that he had never examined any scientific or psychological studies that might be relevant to the necessity of continuing the TA policy. (Ronan Dep. TR 9-10).

Yunich, the present Chairman of the TA, has similarly simply adopted the policy of his predecessors without further inquiry (Yunich Dep. TR 9).

McLaren, executive officer in charge of labor relations and personnel for the TA, generally testified that the TA had relied on no scientific studies relating to the performance capabilities of former addicts, including methadone-maintained persons, to support the continuation of its drug policy. McLaren Dep. TR 99-100; 105.

Warren, the head of the TA's alcoholism program, testified that he knew of no studies relating to the comparative safety problems of employing alcoholics as against persons with a drug abuse history. (Warren Dep. TR 42-43)

Lanzetta testified that he knew of no other transit authorities with blanket exclusionary drug policies like the New York TA's policy. Dep. TR 72.

Some of the TA's own officials even admit that its drug policy is not rationally justifiable. Thus TA Board member Lawrence R. Bailey testified that:

-- he knew of no reason justifying the differences between the TA's alcoholic and its drug policies, and that justification would have to be based on studies regarding, e.g., impact on physical performance, which he admitted the TA did not have (Dep. TR 13-15).

-- he did not think it was the TA's statutory duty "to exclude all persons participating [in methadone maintenance programs] without regard to their category of employment, type of employment and duties of employment." (Dep. TR 21)

-- he thought that the TA drug policy should not apply at all to certain TA positions, which could be determined by simply looking at the duties of the position. (Dep. TR 19-20)

-- that with respect to other TA positions a study -- "particularly with respect to the employability of former addicts in those positions" -- would be helpful in determining the rationality of the TA drug policy. (Dep. TR 27)

The only justifications produced by TA officials for its drug policy regarding methadone and former drug users are limited to such post hoc rationalizations as the following:

1) Methadone is a crutch and persons using it are not motivated ---

See, e.g. Lanzetta's testimony that his only reason for excluding all methadone-maintained persons from all TA employment was that they were not motivated ("How could they be motivated if they have to use Methadone as a crutch" Dep. TR 71), and therefore "they are a risk" (Dep. TR 72). See also Lanzetta Dep. TR 103. Lanzetta was aware of no other reasons McLaren might have for the policy. Lanzetta Dep. TR 118-19.

2) Drug addicts choose to become drug addicts ("it is voluntary because nobody is forcing them to become addicts"), whereas such persons as diabetics and epileptics "have developed diseases that they didn't ask for...." (Lanzetta Dep. TR 74).

3) A variety of alleged physical side-effects of methadone use. Thus McLaren testified as follows:

> "Let's take another part of the aspect of maturing as we're told about methadone. The problem of constipation, the problem of sweating, excessive sweating. The problem of impotence and the problem

of insecurity. Now, we're advised that this is a maturing matter and that it continues, do you know what the problem of constipation is to a bus driver or motorman or a person working out on the tracks where there is no toilets around. They resort to laxatives and do you know what that means when they are driving a bus or a motorman, what does he do, use his hat, stop the train? We can't have that. And this is a very difficult problem for people in the methadone treatments. Excessive sweating. You have been on a bus and seen the bus driver pouring with sweat. He gets claustrophobia. These are very serious personal problems to our people.

Q. How does impotence cause a problem?

A. The insecurity. If we had one test for a bus operator that would give us the ability of the person to sit on a bus and to face all of his hustle and bustle of the pressure of a crowd, we'll throw out intelligence and physicals --

Q. You mean, the test for impotence?

A. Inner confidence.

Q. If you had a test that could definitively determine whether a person was impotent, would you administer that test for bus drivers or disqualify him? Would you administer that test to bus drivers --

A. That goes to the heart of the certification program. You take a man that comes out of a shock -- a shocking experience like being addicted to drugs and suddenly detoxify him and thrust him out into the world and suddenly find he's sweating and impotent and constipated and he's unsure and uncertain. It is a harrowing experience."
(Dep. I TR 96-97)

(McLaren went on to admit that persons would not be automatically disqualified from TA employment because of impotence, chronic constipation or profuse sweating. Dep. I TR 98-99).

4) Limiting persons with drug abuse histories to certain kinds of positions would "create operationally an

unnatural kind of situation that becomes difficult to live with." (Yunich Dep. TR 13)

5) Yunich's "impression" (self-characterized as the "impression in a sort of amateurish way" of a person "not scientifically knowledgeable" Dep. TR 27) that:

a) a former drug abuser not now on drugs "might black out, might be an unstable person";

b) a former drug abuser not now on drugs "might be more susceptible to returning to it than somebody who is not." (Yunich Dep. TR 26-27) (Yunich testified that he had the same impression regarding the likely recidivism of former alcoholics. Yunich Dep. TR 27-28)

In support of plaintiffs' proposed finding that the TA had consulted with no physicians expert in the field of drug treatment who had advised that methadone maintained persons, or other former drug abusers, should not be employed, plaintiffs rely on the TA's implied admission (see pp. 20-21, supra, and also submit the following:

Dr. Lanzetta is the TA's Medical Director. As such, he is the key TA official responsible for the administration of the drug policy, and was responsible as well for its approval and continuance. See finding No. 9, supra, agreed to by the TA. See also Lanzetta Dep. TR 7, 10, 23-24, 29, 48. He clearly is not an expert

in the field of drug treatment and has no special expertise in the employability of rehabilitated former drug addicts, including methadone maintained persons. He has never treated addicts himself. See Lanzetta Dep. TR 6, 87-88.

McLaren testified that the TA had only one expert consultant in the drug area - Dr. Trigg. (McLaren Dep. TR I 87).

Dr. Lanzetta testified that the only physicians who were experts in the drug field whose names he could remember whom he had consulted were Drs. Gollance and Trigg. (Dep. TR 68, 101) He further testified that the persons he had consulted in connection with methadone treatment had stated that methadone maintenance program participants were sufficiently stable to work as TA employees. (Dep. TR 68-69).

Ronan testified that he had talked with Dr. Lanzetta about implementation of the policy, but had:

> "not talked with persons actually in the therapeutic area vis-a-vis the policy of the Authority, not to my knowledge. The occasion never arose." (Ronan Dep. TR 9)

22. Plaintiffs and the TA are agreed on the following finding:

> According to the testimony of responsible TA officials, the TA has never had an accident

> found to be caused by drug use on the part of a TA employee, or to have been caused by a TA employee who was a person with a prior history of drug abuse or a participant in a methadone maintenance program.

In support of this finding plaintiffs submit the following:

Lanzetta Dep. TR 84-85

Ronan Dep. TR 6; 20-22

Bailey Dep. TR 29

McLaren Dep. I TR 110-15: McLaren testified that although accident reports each year run into hundreds or thousands, and employees involved in accidents are tested for drug use, no accident reports showed drug use by any employee. By contrast, McLaren testified that accidents had been caused by persons using alcohol (Dep. I TR 115), and that a bus driver suffering from diabetes or epilepsy had died while driving (Dep. I TR 119).

The TA has submitted the following additional proposed finding:

> Instances have occurred, including one on August 19, 1974, where a conductor, later found to be using heroin, opened the doors of a train on the wrong side, and another on 8/1/73 when a passenger was struck by a train and became wedged between the platform and one of the cars. The train was operated by a motorman found to be using cocaine.

Plaintiffs have no information with respect to defendants' additional proposal, because of defendants' failure

to make complete discovery.

In addition, plaintiffs have proposed the following finding:

> With respect to the "instances" referred to by defendants, there was no indication whatsoever that the employees involved were drug-free former addicts or successful participants in duly licensed and authorized methadone maintenance treatment programs.

23. Plaintiffs and the TA are agreed on the following finding:

> One of the reasons for the TA drug policy is the fact that the TA feels an adverse public reaction would result if it were generally known that the TA employed persons with a prior history of drug abuse, including persons participating in methadone maintenance programs.

B. RELATIONSHIP TO CITY POLICY

24. Plaintiffs proposed the following findings:

> On the basis of a study of the employability of ex-addicts, the New York City Department of Personnel and the New York City Civil Service Commission promulgated the following policy on the employment in mayoral agencies of ex-addicts:
>
> > A history of drug addiction shall not in itself constitute a bar to employment in any City position except [in the uniformed services].
>
> Accordingly, "drug-free former addicts" and persons "successfully participating in recognized chemotherapeutic treatment programs" such as methadone maintenance are fully eligible for employment in all positions in the mayoral agencies, and are to be considered for such employment on the same basis as other persons. Furthermore, drug-free former addicts and

> persons participating in duly licensed and authorized methadone maintenance treatment programs are not in fact absolutely excluded for all positions of employment in the uniformed services.

While the TA has admitted only that the policy was promulgated, it has not denied the other propositions contained in the above. In any event, since the City has agreed to the above propositions in their entirety, and the matters are clearly within the City's knowledge, they must be accepted as beyond dispute.

The City defendants have additionally proposed the following finding to which plaintiffs have agreed and the TA has indicated no position:

> Persons hired pursuant to the City's policy with respect to the employment of former addicts are not separately monitored by the Civil Service Commission and Department of Personnel in their job performance and in fact are wholly integrated into the work force.

Support for the proposition that there is no absolute exclusion of former drug abusers, including methadone-maintained persons, from the uniformed services is contained in the testimony of Richard Unger, Director of the Bureau of Examinations of the City Personnel Department. Unger Dep. TR 48-49.

The City policy is embodied in a Personnel Policy and Procedure Bulletin issued on March 22, 1972, by defendant Harry I. Bronstein, former Director of the City Personnel Department and Chairman of the City Civil Service Commission. See PX 7. The process by which the City policy was formulated

is described in detail in Nos. 36-37 of the answers of City defendants to plaintiffs' interrogatories and the exhibits thereto. PX 2, 8.

Plaintiffs have additionally asserted the following proposed finding, as to which the City has also agreed (and the TA has taken no position):

> In order to fully effectuate the policy, the Civil Service Commission has issued a variety of directives and guidelines to city agencies and personnel, including one entitled "Questions and Answers Regarding the Policy of Hiring Former Addicts." (See PX 9)

Plaintiffs' Exhibits 7 and 9 describe the scope of applicability of the City's policy with respect to employment of former drug abusers in the mayoral agencies.

Although this policy was initially promulgated with respect to the mayoral agencies, it has been embodied in the medical standards for city-wide titles of employment in the TA. See PX 10.

The City policy is effectuated through an active recruitment program directed toward former drug abusers:

> "[Since] the promulgation of the City's policy toward drug-free former heroin addicts or methadone maintenance program participants, the Recruitment Division has established an on-going liaison with the Addiction Services Agency [ASA].... We furnish ASA with approximately 200 copies per month of our monthly job flyer, which they in turn distribute to approximately 180 outlets --

drug rehabilitation programs,'half-way houses', therapeutic communities, etc. If any of these 180 ASA program participants require additional information concerning particular City jobs during any given month, they contact either the coordinator at ASA central..., or they contact the Recruitment Division directly. We then send them a supply of individual job flyers, application forms and whatever other information they require.

"In addition, we distribute our monthly flyer to approximately 2,200 organizations of all types including 56 addiction treatment programs not necessarily on ASA's mailing list. ...

"We prepare both English and Spanish individual job flyers for selected titles. A sampling of these titles includes: Traffic Control Agent, Fingerprint Technician Trainee, ... Police Administrative Aide, Fire Alarm Dispatcher, Custodial Assistant, Junior Building Custodian, College Office Assistant A, College Secretarial Assistant A, General Entrance Stores Series, among others. ... We have also been in repeated contact with Vera Institute-Wildcat Services Corporation, a major drug rehabilitation program, and have established a City job information liaison system with them. We give them

McLaren similarly testified that [illegible]

the monthly and selected individual job flyers and serve as consultants to their staff regarding City recruitment and hiring practices and procedures."

(Answers of City defendants to Plaintiffs' Interrogatories, PX 2, No. 32)

Testimony obtained in discovery made clear that the TA was not excluded from coverage under the City policy because of any rational assessment of the nature of TA employment and determination that the TA should not be covered, but solely because it was not a mayoral agency. Indeed, the Director of the City Personnel Department's Bureau of Examinations testified that he knew of no reason "other than the fact of the lawsuit and other than possible questions as to legal jurisdiction over the TA," that TA positions shouldn't be considered on an individual basis to see whether methadone maintained persons and other former drug abusers should be eligible. (Unger Dep. TR 80-82)

The TA has submitted the following proposed additional findings, with which plaintiffs have agreed subject to the additions and qualifications bracketed below:

> The TA is not a mayoral agency, that is, subject to the jurisdiction of the Mayor of the City of New York or to policies prescribed by the Mayor for mayoral agencies. [However, the appointment, promotion and continuation in service of all TA employees are governed by rules and standards promulgated by the New York City Civil Service Commission (see No. 10, supra).]
>
> The City Civil Service Commission has established medical standards for TA operating and maintenance positions which

provide that chronic alcoholism, drug addiction or drug abuse will disqualify for employment, and a history of such may reject. [The TA, which administers medical examinations for TA employment on behalf of the Department of Personnel has applied these standards to effectuate its drug policy by uniformly rejecting all persons with a history of drug abuse for TA employment in operation and maintenance positions (See No. 15, supra).]

With respect to city-wide titles, that is titles used by the TA as well as throughout the civil service generally, such as typist, clerk, stenographer, etc., the current medical standards provide that the abusive use of drugs will reject "unless the eligible is successfully participating in a recognized chemotherapeutic program or has satisfactorily completed any other acceptable program and is drug free." [The medical standards provide that a history of drug abuse will not disqualify a job eligible if he satisfies the above-quoted standard. (See PX10)]

In not appointing applicants for employment from eligible civil service lists, other than those found medically disqualified, the TA excerises its statutory right to select one of three persons standing highest on the eligible list certified by the Civil Service Commission. [Thus the TA enforces that part of its policy with respect to the employment of former drug abusers which excludes all former drug abusers from all city-wide titles of TA employment by means of the "one out of three" power.]*

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* Plaintiffs note that both during discussions with plaintiffs conducted during the course of pre-trial procedures prescribed by the Court, and in a subsequent conference with the Court conducted on October 4, 1974, the TA defendants agreed to be bound by the following admission: The TA exercises its statutory right to select one of three persons standing highest on the eligible list of persons certified for TA employment by the Civil Service Commission to pass over applicants for city-wide title of employment who have prior histories of drug abuse, including participation in methadone maintenance programs.

A rejected applicant may appeal a medical disqualification to the Commission but he may not appeal from a pass-over under the one-out-of-three rule.

While the last proposed finding quoted above is somewhat ambiguous it apparently concedes that the TA uses its one-in-three power to apply its drug policy to all city-wide titles, in violation of the City Civil Service Commission's medical standards for those titles.* In any event Lanzetta's testimony demonstrates beyond any doubt that the TA's policy of absolutely excluding from employment all persons with a drug history, including all methadone-maintained persons, is applied to city-wide titles within the TA, despite the fact that the City Civil Service Commission's medical standards provide specifically that such persons are to be considered medically qualified for those positions. See generally Lanzetta Dep. TR 38-41. Thus he testified that the TA medical department examines all applicants for TA employment, including applicants for such positions as secretary and stenographer (city-wide titles), and applies its own medical standards regarding drug abuse rather than the standards entitled "Medical Standards for City-wide Titles Used in the Transit Authority." (Ibid; see also Lanzetta Dep. TR 94-95) Both McLaren and Yunich also testified that the TA drug policy was applied to all city-wide titles within the TA, as well as to the TA

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* Unger testified that the City drug policy should be applied to city-wide titles in the TA. Unger Dep. TR 42-44.

titles. McLaren Dep. I TR 135; Yunich Dep. TR 9. McLaren testified that the TA policy of rejecting persons with drug abuse histories was implemented through use of the one-in-three rule (McLaren Dep. II TR 161).

With respect to State Civil Service employment, the New York State Drug Abuse Control Commission (DACC) and the State Civil Service have directed that "Candidates for employment in positions in State government shall not be denied employment solely because of a history of drug abuse." PX 11.

25. Plaintiffs and the TA have agreed to the following findings:

> "City-wide titles" of employment are used to designate those job positions in which civil service employees perform essentially the same tasks regardless of the specific governmental agency in which they are employed. Examples of city-wide titles are secretary, stenographer, clerk and motor vehicle operator. About 3,400 of the TA workforce of 42,500 are in city-wide titles.

Plaintiffs have proposed the following finding as to which the TA has not indicated its position:

> Approximately half the employees of the TA work in titles which are designated city-wide or which are substantially equivalent to city-wide titles.

Thus Unger, Director of the Bureau of Examinations for the City Personnel Department, testified that city-wide titles in the TA should be substantially the same as in other City agencies. Unger Dep. TR 42-44. A TA Board member, defendant Bailey, testified to substantially the same effect ("We

have a fiscal section in the Transit Authority, and, obviously, a clerk in that fiscal section is no different than the clerk in another fiscal section in a mayoral agency or some other big agency, the Comptroller's officer.") (Bailey Dep. TR 10)

Shanen, Administrator Personnel Examiner, Chief of the TA Examination Division, responsible not only for the TA but also for the Engineer Division and other examinations in the skill trade, maintenance and general field in the City, testified that many TA titles were substantially the same as titles in other City agencies noting, for example, that the TA title of Bus Maintainer Group B was quite comparable to the City Auto Mechanic title. Shanen Dep. TR 52-53. Shanen also mentioned such City titles as Junior Civil Service Engineer and Mechanic Engineer, and noted that engineers were responsible for, e.g., water supply studies and structural work. Shanen Dep. TR 59-61.

C. ADMINISTRATION OF THE TA DRUG POLICY

26. Plaintiffs and the TA are agreed on the following finding:

The TA policy with respect to the employment of former drug abusers is administered by means of a program, initiated in 1970, under which medical examinations, including urine analyses, designed to detect the use of drugs, are administered on a periodic basis to some TA employees and applicants for employment.

a. All prospective employees under age 35 are given drug-detection urinalyses as part of their pre-employment medical examination. (For support see, e.g.: Lahzetta Dep. TR 22-23, 23-24, 25-26, 28-30; McLaren Dep. TR I 49; 50.)

b. Bus operators, conductors and motormen are physically examined every 2 years if under 50 years of age and every year if over 50 years of age. Towermen and Surface Line Dispatchers are examined every 5 years. If under 35 years of age all are given drug-detection urinalyses at the time of their physical examinations. (For support see, e.g.: Lanzetta Dep. TR 31; McLaren Dep. TR I 51.)

c. All TA employees under age 35 are given drug-detection urinalyses as part of promotional medical examinations required by the TA.

Other than the above mentioned examinations, TA employees and prospective employees are not routinely examined for symptoms of drug abuse, although any department in the TA may require a TA employee to undergo a physical examination at any time if such is indicated.

27. Plaintiffs and the TA are agreed on the following finding:

> TA employees showing physical manifestations of drug abuse other than the definite presence of morphine or methadone or other illicit drug in the urine, are referred for consultation to Dr. Harold Trigg of Beth Israel Medical Center, who reports his impression to the TA whether the individual is abusing or has abused drugs. The TA accepts Dr. Trigg's impression of the case.

Plaintiffs have also proposed the following finding as to which the TA's position seems unclear:

> Any person who Dr. Trigg reports to have probably ever abused drugs is terminated from TA employment, even if that person is a drug-free former addict or was never an addict. Dr. Trigg does not furnish to the TA any assessment of the suitability for employment with the TA of any person he examines. In fact, no one associated with the TA individually assesses the suitability for TA employment of persons with a history of drug abuse.

In support of this finding, see generally No. 15, supra. In addition, plaintiffs submit the following:

Dr. Trigg testified that his job is to give an opinion "as to whether or not such and such an employee is currently abusing substances with a high abuse potential or has in the past abused substances with a high abuse potential," defining "abuse" to cover either use or addiction. (Dep. I TR 22) See also Dep. I TR 33 (gives "Clinical Impression" as to whether sufficient evidence on which to base impression of drug abuse "past or present"). He said part of his role was to determine "whether a person is a former drug abuser" Dep. II TR 4, and that he reported to the TA if a person had track

marks that suggested drug use in the past even if there was no evidence of current drug use. Dep. II TR 9-10. See also Trigg Dep. TR 31 ("and I was making an assessment as to hard drug abuse in the past or present, that's all").

Trigg testified that this is the sole opinion he gives and he gives no opinion as to the employability of any individual. Dep. I TR 33-34.

McLaren testified that Trigg's recommendation was considered by the TA "to be the final determination with respect to eligiblity as far as drug use is concerned." (McLaren Dep. I TR 75)

This testimony, combined with No. 15 supra, which demonstrates conclusively that the TA's policy is to disqualify and dismiss on the basis of any drug use, past or present, makes it clear that all persons found by Trigg to have probably used drugs in the past (or to be presently using drugs) are automatically dismissed.

Dr. Trigg himself extensively discribed his limited role to the Court at a conference held on April 4, 1974. In the course of that conference, Dr. Trigg stated that his role was strictly limited to reporting his clinical impression of whether the individual involved had ever in his life abused drugs. Dr. Trigg further stated that prior to his deposition in this case he had been unaware of the reliance placed by the TA on his reports. Furthermore, Dr. Trigg stated that the only conversations he had had with officers of the TA with

respect to the employability of former drug abusers were those in which he urged the TA to employ some of the participants of the Beth Israel Methadone Maintenance Treatment Program which he directs.

The TA has submitted the following finding:

> Prospective employees are generally not referred to Dr. Trigg, except in some situations where marijuana or prior drug use is suspected or admitted.

Plaintiffs agree that this was true in the past, but submit the following finding:

> Since the summer of 1974, prospective TA employees showing physical manifestations of drug abuse other than the definite presence of morphine or methadone or other illicit drug in the urine have also been referred for similar consultation with Dr. Trigg.

Dr. Trigg admitted this fact in a conversation with plaintiffs' counsel on October 11, 1974.

IV. NATURE OF TA EMPLOYMENT

A. OVERVIEW

28. Plaintiffs and the TA are agreed on the following findings:

> The TA employs about 40,000 persons in both operating and non-operating positions (exclusive of the transit police). MaBSTOA employs about 6,500 persons. The TA hires about 2,500 new employees annually and MaBSTOA about 500.

Beyond this there is no agreement. Plaintiffs have submitted the following finding:

> The TA employs large numbers of both operating and non-operating personnel who perform widely varied but typical industrial and office keeping tasks such as clerical, secretarial, maintenance, and mechanical work.

In support plaintiffs submit the list of job titles in the TA furnished to plaintiffs by the TA defendants which reveals that the TA employs large numbers of persons in such titles as account clerk (25 persons); administrative assistant (97 persons); assistant civil engineer (207 persons); attorney (22 persons); bookkeeping machine operator (9 persons); car cleaners (955 persons); cashier (106 persons); civil engineer draftsman (27 persons); claim examiner (33 persons); clerk (563 persons); collecting agent (145 persons); electrical engineering draftsman (47 persons); junior engineers (99 persons); keypunch operator (57 persons); messenger (12 persons) police administrative aid (30 persons); railroad clerk (cashier) (4,414 persons); railroad porter (janitor) (1,162 persons); senior clerk (286 persons); stenographer (93 persons); telephone operator (39 persons); turnstile maintainer (141 persons). See PX 12.

Even the TA has admitted that city-wide titles in the TA are comparable to similar positions in other City agencies. See No. 25 , supra. See also McLaren Dep. II TR 151; McLaren Dep. I TR 26-27 (TA titles are only for jobs where because of specialization and peculiar nature of the work can identify as TA titles; city-wide titles for other work).

29. Plaintiffs submitted the following proposed finding:

> The performance of most TA employees is directly monitored by supervisory personnel. With respect to virtually all employees who are not directly supervised, there exist electronic or other mechanical means to monitor their performance. The TA also uses a number of fail safe and buddy systems to provide back-up safety in its operations.
>
> (See, e.g., McLaren Dep. II TR 146-50; Shanen Dep. TR 47.)

As to this the TA has admitted only the following:

> The automatic signalling system of the subways is designed as a fail-safe system.

30. Plaintiffs have submitted the following proposed finding as to which the TA has not agreed:

> TA job positions vary widely with respect to the potential safety impact on the riding public of TA employees of improper performance by persons in those positions. Approximately 75 percent of all TA jobs are not directly related to the safety of passengers or TA employees, and about half of all TA jobs do not involve direct dealings with the public or the technical or mechanical operations of trains.

In support of this see generally No. 28, supra.

In addition Plaintiffs submit the following:

Defendant McLaren specifically admitted that no more than half of the jobs on TA property (thus excluding various clerical, maintenance and other off-property jobs) were related to passengers' safety or to other employees' safety, noting as specific examples of

non-safety-related or "non-critical" positions the following: car maintainers, car cleaners, railroad clerks and railroad porters (indicating that of course there might be certain specific jobs within these titles that could involve more critical work) McLaren Dep. II TR 135-37. Thus when the off-property jobs are taken into account it is clear from McLaren's own admissions that well over half the jobs with the TA are not safety-related.

McLaren further admitted in discussing the categories of persons to whom periodic physicals were given (limited to: bus operators, conductors and motormen who receive exams every 2 years; towermen and surface line dispatchers who receive exams every 5 years) that the degree of safety sensitivity was a criterion in determining the categories (McLaren Dep. I TR 51-52). He did indicate that he felt the periodics should be expanded to other groups but only to those "working around the tracks or in controlling or directing our equipment" (McLaren Dep. I TR 52). He testified that roughly one-third of the employees in TA titles were now covered by the periodics and that if periodics were extended to all the titles he felt should be covered only about one-half the employees in TA titles would be covered. (McLaren Dep. TR 58) He clearly

admitted that city-wide titles did not involve safety:

"Q. Are any periodic medical examinations given to any persons in City wide titles?

A. No. They are only given to those involved in critical jobs effecting the safety and service of our system."

(McLaren Dep. I 51)*

The TA's policies regarding alcohol, diabetes, epilepsy and other physical disabilities, as well as use of such drugs as amphetamines (see generally proposed and agreed to findings Nos. 44-57, infra, and plaintiffs' supporting documentation) demonstrate conclusively that the TA has concluded that TA job positions vary widely with respect to the potential safety impact on the riding public or TA employees of improper performance by persons in these positions.

Warren, the Director of the TA's alcoholism program, testified that alcoholics might be transferred to, for example, platform conductor positions because a platform conductor "is not in a position here to jeopardize the safety of our passengers...." (Dep. TR 18-19). As examples of other non-critical positions he mentioned: maintenance shop positions, railroad clerks, railroad porters, caretakers, watchmen, ventilation and drainage maintainers, turnstile maintainers (Dep. TR 19). See

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* Lanzetta testified that with regard to medical conditions other than drug use the TA applied a "more lax" medical standard in screening persons for city-wide titles (Dep. TR 94-95).

also Warren Dep. TR 59-60. He stated that none of the clerical jobs would be considered critical (Dep. TR 19). (See also testimony supporting proposed finding 44-46, indicating that epileptics and diabetics are allowed to fill these kinds of positions even if their medical conditions are severe; if their conditions are under control they may hold any TA position.)

Warren testified that for purposes of the alcoholic program about 60 percent of jobs in TA titles might be considered critical and 40 percent non-critical (Dep. TR 59), and subsequently testified that by critical he meant any position which might involve "a possible threat to the riding public" or "where his drinking may be a dangerous situation to his fellow employees...." (Dep. TR 70).

Moreover, Warren testified that graduates of his program had successfully been employed in "every position in the Authority", including that of Towerman (Dep. TR 27) and positions dealing with high voltage (ibid). He testified that alcoholics in positions such as motorman and trainmaster had participated in his program on a confidential basis (Dep. TR 27-29). See also Warren Dep. TR 57.

Ronan testified that he had had no reasons to conclude that the alcoholism program endangered the riding public and, indeed, that it had received general commendation. (Ronan Dep. TR 12-14)

McLaren similarly testified that it was a "very good operation." (Dep. I TR 23)

Two members of the Transit Authority Board, defendan Lawrence R. Bailey and Justin N. Feldman, testified that TA titles varied widely with respect to safety considerations and that not all were safety-related. (Bailey Dep. TR 7-8; Feldman Dep. TR 17-18)

that persons referred to it have alcoholism

31. Plaintiffs and the TA are agreed on the following finding:

Persons in TA employ are employed in approximately 400 different job titles. The following listed job titles are entry level titles, that is, a person need not have been in a prior TA position to qualify for the title. Where indicated by an asterisk the title is both entry level and promotional.

Conductor
*Railroad Clerk
Railroad Porter
Railroad Stock Assistant
Turnstile Maintainer
Bus Operator
*Electronic Equipment Maintainer
Electronic Equipment Maintainer's Helper
Light Maintainer
Light Maintainer's Helper
*Maintainer's Helper - Group B
Maintainer's Helper - Group D
Mechanical Maintainer's Helper - Group B
Power Distribution Maintainer's Helper
Railroad Caretaker
Signal Maintainer's Helper
Structure Maintainer Trainee - Group A
Structure Maintainer Trainee - Group B
Structure Maintainer Trainee - Group C
Structure Maintainer Trainee - Group D
Structure Maintainer Trainee - Group E
*Telephone Maintainer
Telephone Maintainer's Helper
*Trackman
*Ventilation and Drainage Maintainer
Ventilation and Drainage Maintainer's Helper
Airbrake Maintainer
Car Cleaner
Car Inspector
Car Maintainer - Group A
Car Maintainer - Group B
Car Maintainer - Group C
Car Maintainer - Group D
Car Maintainer - Group E
Car Maintainer - Group F

Car Maintainer Trainee
*Mechanical Maintainer Group C
*Road Car Inspector
Maintainer's Helper - Group C
*Bus Maintainer - Group A
*Bus Maintainer - Group B
Railroad Watchman
Railroad Stock Assistant

B. HIRING PROCEDURES

32. Plaintiffs and the TA are agreed on the following finding:

> TA employees are hired on the basis of a competitive written examination, medical examination and personal interview. Although the written examination is officially prepared by the Civil Service Commission, the TA contributes both money and personnel to the Commission for such preparation and consults with the Commission with respect to the examination. A prospective TA employee is not called down for a medical examination and interview until he has been notified that he has passed the written examination.

Plaintiffs have additionally proposed the following finding to which TA defendants have not agreed but to which City defendants (who have the responsibility for giving examinations) have agreed:

> Examinations for the TA job titles that have the greatest number of employees may be given as frequently as once a year.
> (See Shanen Dep. TR 29)

33. Plaintiffs and the TA are agreed on the following finding:

> The individual medical standards for employment in TA titles are prepared and promulgated by

the Civil Service Commission. The TA is customarily consulted in this matter by the Commission.

Plaintiffs have proposed the additional finding as to which the TA does not agree (but the City does):

> The general medical standards for TA employmen in TA titles are prepared by the TA and submit to the Civil Service Commission, which official promulgates them.

In support see Appendix D-I to City's Answers to Plaintiffs' Interrogatories; Lanzetta Dep. TR 36-37 (testimony that he wrote the present medical standards for TA employment, which were approved by McLaren and subsequently submitted to Civil Service Commission which approved them).

34 - 37. Plaintiffs and the TA are agreed to finding 34-37 as indicated below:

> 34. Pursuant to the New York Civil Service Law, the TA has the right to appoint to TA job positions one out of every 3 of the top persons found eligible on the basis of the written exam and the medical examinations, and to refuse to employ those persons not so appointed.
>
> 35. "Class Specifications for Titles in the Rapid Transit Railroad Service" are documents prepared by the City Department of Personnel which contain short general descriptions of the duties and responsibilities of the individual TA job titles to which they relate. The "Class Specifications" also contain "qualification requirements" that indicate what position (if any) a person must hold to be promoted to a particular TA title as well as "direct lines of promotion" that indicate to what positions a person may be promoted from a particular TA title. Some of the "Class Specifications" are approximately 20 years old. The performance of persons in job titles to which specifications relate is observed and assessed before any current examinations are prepared and given.

Plaintiffs have proposed an additional finding to which the City has agreed:

> Most of the Class Specifications were prepared on the basis of a desk audit of the duties of the job position

> 36. "Notices of Examination for Titles in the Rapid Transit Railroad Service" are documents prepared by the City Deparment of Personnel to announce the administration of competitive examinations for appointment to positions of employment with the TA, and they contain, inter alia, descriptions of the duties and responsibilities of the TA job titles to which they relate, as well as the medical qualifications for those titles. The "Notices of Examination" are updated each time the examinations to which they relate are given, and the job descriptions contained therin supersede any inconsistent description in the "Class Specifications" described supra, No. 35.

> 37. Since 1970, "Field Survey Reports" have been prepared in conjunction with all new "Notices of Examination." These reports include detailed descriptions of the duties of the particular job titles to which they relate and are prepared on the basis of: (a) the Class Specifications; (b) documents submitted by TA Departments; (c) consultation with a TA Supervisor by Senior Personnel Examiners; and (d) direct observation of persons performing actual tasks. The Field Survey Reports also contain assessments of the physical strenuousness of the performance required in particular job titles. The list of duties included in the Field Survey Reports is exhaustive, and a TA employee serving in a particular job title may not be required to perform duties other than those specified for his title in the reports.

38. Plaintiffs have submitted the following finding as to which the TA has not agreed:

> Other than the Field Surveys described in No. 37 supra, no on-site studies have been conducted

to ascertain whether the job descriptions of TA titles contained in the Class Specifications and Notices of Examination actually reflect the skills, knowledge, and abilities that are necessary for successful performance in these titles. In particular, no studies have have been conducted focusing on which titles could reasonably be filled by drug-free former addicts or persons participating in methadone maintenance or other chemotherapeutic drug treatment programs. No study focussing on the degree of safety sensitivity of TA job titles has ever been conducted.

(In support see Unger Dep. TR 68, 73; Shanen Dep. TR 43-44, 63-65.)

The City has agreed only that:

No study of former addicts including persons maintained on methadone has been conducted to determine their ability to perform the specific duties associated with TA titles of employment.

Plaintiffs have also submitted the following proposed finding:

In connection with the instant litigation the City defendants indicated that they were prepared to initiate a study which would for the first time have assessed the nature of the various TA positions with a view toward determining the ability of methadone maintained former drug addicts to perform in the different positions. Such a study has not in fact been commenced.

(In support see Unger Dep. TR 64-66, 72-73.)

C. DISCIPLINARY PROCEDURES

39. Plaintiffs and the TA are agreed on the following finding:

> No TA employee covered by §75 of the New York Civil Service Law can be dismissed or suspended from his position without a hearing, which may take place either within a TA department or before an official TA trial board. Both hearing bodies may impose sanctions ranging from an informal "warning" or "caution" to a formal written "reprimand" to suspension. No more than a three day suspension may be imposed at a Departmental Hearing, while longer suspensions and dismissals may be imposed at a Trial Board Hearing. Decisions of TA hearing bodies are either accepted, modified or rejected by the TA's Executive Officer for Labor Relations and Personnel.

40. Plaintiffs and the TA are agreed on the following finding:

> A TA employee may be "warned" or "cautioned" by his department without any hearing procedure. A TA employee can remain in good standing even if he has some "warnings" or "cautions" in his record.

Plaintiffs have proposed the following finding with which the TA does not agree:

> Most TA employees eventually accumulate a number of "warnings" or "cautions" in their record.

In support of plaintiffs' propositions see generally McLaren Dep. TR 19-22 (warnings and cautions are for minor matters; a number of cautions may be accumulated before an employee goes to the Trial Board; TA has a system of progressive discipline where, based on accumulation of same, further disciplinary action may be taken).

41. Plaintiffs and the TA have agreed to the following finding:

> Decisions resulting from the TA Trial Board may be appealed to an "Impartial Review Board" made up of representatives of the TA and the Transport Workers Union. The Impartial Review Board may recommend to the Executive Officer for Labor Relations and Personnel how he should exercise his power to accept, modify or reject those decisions.

42. Plaintiffs and the TA have agreed to the following finding:

> Actions of the Executive Officer for Labor Relations and Personnel may be appealed to City Civil Service Commission, or, alternately, to the courts.

43. Plaintiffs have submitted the following finding:

> Except for persons known to have formerly abused drugs, no TA employees are subjected to disciplinary proceedings for a status or an illness. Disciplinary proceedings are instituted solely for unacceptable job performance.

The TA has not indicated its position as to sentence one of the above and with respect to sentence two has admitted the following:

> Disciplinary proceedings are instituted for misconduct, imcompetence or a violation of TA Rules.

Plaintiffs have also submitted the following proposed finding as to which the TA has not indicated its position:

> TA employees suspended for medical reasons not related to drug abuse receive full pay during the period of suspension while TA employees suspended for reasons related to drug abuse do not receive pay during the period of suspension.

D: POLICY WITH RESPECT TO PHYSICAL DISABILITIES AND ALCOHOLISM

44 - 46. Physical Disabilities

In support of plaintiffs' propositions 44 - 46 see generally:

Lanzetta Dep. TR 73-77; 104-106; 107-110;

McLaren Dep. TR 119-25; 126-30.

44. Plaintiffs have proposed the following finding with which the TA has not agreed.

> The TA maintains a policy respecting diabetics, epileptics, and persons with heart disease which is strikingly dissimilar to its drug policy

The TA has, however, agreed that it does not bar employment to persons suffering from physical disabilities such as diabetes, epilepsy or heart disease, that it will consider the applicant in light of all the circumstances such as the job involved, his performance ability and the degree of sensitivity of the job involved, etc., and that it has in fact hired persons with such disabilities. (TA's proposed finding No. 44 and see No. 45, infra). Plaintiffs submit that juxtaposition of this policy of individualized consideration with the absolute exclusionary policy applied with respect to the employment of former drug abusers (see No. 15, supra) dramatically demonstrates that the two policies are indeed "strikingly dissimilar."

45. Plaintiffs and the TA are agreed on the following finding:

> The TA does not maintain a blanket rule barring the hiring in any capacity of persons with a history of diabetes, epilepsy or heart disease. Instead, it is the policy of the TA to consider the hiring of such persons on an individual

performance capabilities and the safety sensitivity of the job to which they seek appointment. Diabetics, epileptics and persons with heart disease have been knowingly hired by the TA.

46. Plaintiffs have proposed the following finding:

Persons who have been employed by the TA for over 2 years and who are discovered for the first time to have diabetes, epilepsy or heart disease are continued in TA employment. The TA makes an individual assessment of their actual performance capabilities to determine in which TA positions they are capable of performing without impairing the safety of the riding public or other TA employees. In accord with their capabilities, such persons are then allowed to retain their current position of employment or to transfer to a less sensitive position or a light duty position. While assignment to light duty theoretically depends on the availability of light duty positions, no person has ever been discharged from TA employment due to diabetes, epilepsy or heart disease due to the unavailability of such positions.

The TA has agreed with the following exception:

Transfer to a less sensitive or light duty position is only made where a vacancy is available.

Plaintiffs do not agree to the above and have proposed the following additional finding:

There are sufficient vacancies on a regular basis to allow for the re-assignment of persons suffering from diabetes, epilepsy or heart disease to light duty positions.

In support, plaintiffs submit the following:

Lanzetta specifically testified that TA employees who have epilepsy, diabetes or other non-service connected disabilities are never terminated from employment because

there is no position for them if they have been employed over two years. (Dep. TR 77) McLaren testified that such persons are guaranteed a TA position (Dep. I TR 133) and that the TA annual turnover rate was about 5 percent (ibid). On vacancy and turnover rate see also Shanen Dep. TR 44-45.

47 - 56. Alcoholism Policy

In general support of its proposed findings Nos. 47-56, plaintiffs submit the following:

Warren Dep. TR 3-4; 5-9; 10-11; 11-12; 13-15; 16-19; 21-24; 26-31; 43-44; 47-62; 75-78.

Ronan Dep. TR 10-11.

McLaren Dep. II TR 133-37; 138-39; 140; 141-46.

47. Plaintiffs have proposed the following finding with which the TA has not agreed:

> The TA maintains a policy respecting the employment of alcoholics, which is strikingly dissimilar to its policy respecting the employment of former drug abusers.

The TA has, however, agreed that it does not bar employment to an applicant revealing a past history of alcoholism or alcohol abuse, that such persons may be hired depending upon the circumstances of the case, including degree of rehabilitation; performance ability, job sought, etc, and that the TA has hired persons with such histories. See TA's proposed finding No. 47 and the agreed upon finding No. 48, infra. Plaintiffs submit that juxtaposition of this policy

of individualized consideration with the absolute exclusionary policy applied with respect to the employment of former drug abusers (see No. 15, supra) dramatically demonstrates that the two policies are indeed "strikingly dissimilar."

48. Plaintiffs and the TA have agreed to the following finding:

> The TA does not maintain a blanket rule barring the hiring in any capacity of persons with a prior history of alcoholism. Instead, it is the policy of the TA to consider the hiring of such persons on an individual basis in light of factors such as their rehabilitation and the safety sensitivity of the job to which they seek appointment. Persons with prior histories of alcoholism have been knowingly hired by the TA.

49-51.

49. Plaintiffs and the TA have agreed to the following finding:

> Rule 11(a) of the TA Rules and Regulations prohibits TA employees from drinking alcoholic beverages during their tours of duty or at any time to an extent making them unfit to report for duty or to be on duty. Violation of Rule 11(a) does not, however, result in automatic dismissal from the TA's employ, even if the offending employee is an alcoholic. If a TA employee is accused by a supervisor of being in violation of Rule 11(a), he is subjected to disciplinary proceedings, the nature of which relates to the safety sensitivity of the job position that he holds.

Plaintiffs have submitted the following findings 50-51:

> 50. Persons in job positions that do not directly relate to passenger or employee safety face proceedings at the Departmental level for a first violation of Rule 11(a). The maximum penalty that can result after such proceedings is a three day suspension from duty. Persons

disciplined at the Departmental level for violation of Rule 11(a) are customarily allowed to remain in their job positions. Approximately 60% of the TA's job positions are considered non-safety sensitive for the purposes of enforcing Rule 11(a).

51. Persons in job positions that relate directly to passenger or employee safety face proceedings at a Trial Board level for a first violation of Rule 11(a). Persons who have previously been disciplined at the Departmental level for violating Rule 11(a) may also be summoned before the Trial Board for subsequent violations. Although the Trial Board may impose dismissal from TA employment as a penalty for violating Rule 11(a) it rarely does so the first time Rule 11(a) violators appear before it. Even in those instances when the Trial Board determines that the severe penalty of dismissal is warranted, that penalty is usually held in abeyance pending an opportunity for the offending employee to participate in the TA Employee Counseling Service. Persons in safety sensitive positions who have been summoned before the Trial Board for violating Rule 11(a) are usually required to accept a demotion to a non-safety position as a condition of continued TA employment.

The TA has indicated substantial agreement with plaintiffs' proposed 50-51 in its proposed counter-finding No. 49. Plaintiffs agree with the TA's proposed counter-finding only insofar as set forth below and only with the additions and qualifications bracketed below.

A violation of Rule 11(a) of the TA's rules prohibiting employees from drinking alcoholic beverages during their tour of duty or at any time to an extent making them unfit to report for or be on duty [may] result in disciplinary action against the employee, including [, in some instances] suspension and dismissal.

If such an employee has less than three years of service and holds a [safety sensitive] position in which he is directly engaged in operations, such as Motorman, Conductor or Bus Operator,

he [may] be dismissed. If he holds a position [that does not relate directly to passenger or employee safety] a hearing [may] be given him either at the departmental level or trial board level, depending on all the circumstances of the case, and discipline may be imposed including [in some instances] suspension and dismissal.

If the employee violating Rule 11(a) has more than three years of service and holds an operating position, he [may] be demoted from that position. If he holds a non-[safety sensitive] position, he [may] be given a hearing at either the departmental level or trial board level, depending upon all of the circumstances of his case, and is subject to discipline, but less than dismissal for a first offender.

[Persons in job positions that do not directly relate to passenger or employee safety face proceedings at the Departmental level for a first violation of Rule 11(a). The maximum penalty that can result after such proceedings is a three day suspension from duty. Persons disciplined at the Departmental level for violation of Rule 11(a) are customarily allowed to remain in their job positions. Approximately 60% of the TA's job positions are considered non-safety sensitive for the purposes of enforcing Rule 11(a).]

In addition to discipline [an] employee [found in violation of Rule 11(a)] [may] be referred by his department to the TA's Employee Counselling Service, which provides counselling and other aid to employees who have drinking problems. An employee may also voluntarily seek such services. If he has a problem, he is invited to participate in the services of the program, including regular reporting and faithful participation in an established AA program not conducted by the TA. In a few cases depending on the circumstances the disciplinary penalty that is imposed for the violation, except demotion in the case of operating employees, may be reserved by the Hearing Officer contingent upon the employee's continued cooperation with the counselling service. [The disciplinary penalty held in reserve may include as severe a penalty as dismissal.]

The main areas of disagreement appear to be:

-- plaintiffs' claim that approximately 60% of the TA's jobs are considered non-safety related for purposes of enforcing Rule 11(a). (Plaintiffs' proposed finding No. 50);

-- the manner in which Rule 11(a) is enforced with respect to non-safety related jobs;

-- whether the various disciplinary and other measures that may be taken under various circumstances are mandatory of discretionary.

With respect to these differences plaintiffs rely on the material cited supra p. 55 , in general support of propositions Nos. 47-56, as well as the material cited in support of Nos. 53-56, infra.

In addition, plaintiffs rely on the material cited in support of No. 30, supra, and specifically the testimony of McLaren that only about one-third to one-half of on-property TA jobs were safety-related, (pp. 42-43, supra) and the testimony of Warren, Director of the TA's Alcoholism Program, to the effect that only about 60% of those jobs were considered safety-related for purposes of the alcoholism program. (p. 45, supra)

52. Plaintiffs and the TA are agreed to the following findings:

> The Employee Counselling Service is an organization that has existed for over 18 years within the TA to provide assistance for problem drinkers employed by the TA. All persons found

in violation of Rule 11(a) are referred to the Counseling Service. If the Service determines that persons referred to it have alcoholism problems, they are invited to participate in the Service's program. That program requires consistent attendance at a specified number of Alcoholics Ananymous meetings, as well as regular reporting to the Counseling Service. The success rate of the TA Employee Counseling Service Program is only approximately 60%, since some participants have relapses into drinking and some employees referred to the program drop out or refuse to participate. Nevertheless, persons who do not succeed in the TA Employee Counseling Program are allowed to continue in the employ of the TA as long as their on-the-job performance remains adequate. The TA makes no inquiry into its employees' use of alcohol off the job as long as such use does not impair their functional capabilities during their tour of duty with the TA.*

Employees not remaining in the program are not for that reason subject to any discipline.

53. Plaintiffs and the TA are agreed on the following finding:

> TA employees who have not been found to have been in violation of Rule 11(a), but who have problems with alcoholism, may enroll in the Employee Counseling Service on a confidential basis. Such enrollment is not reported to the employees' supervisors, and they are not required to accept a demotion in position, even if their current position is safety sensitive. Persons have enrolled in the Counseling Service on a confidential basis while serving in such highly sensitive positions as motormen, towermen, dispatchers, and trainmasters.

Thus Warren testified that alcoholics in positions such as motorman and trainmaster had participated in his

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* Thus McLaren testified specifically that the TA made no attempt to screen its workforce to determine whether persons had drinking problems but, rather, looked solely to job per-

program on a confidential basis (Dep. TR 27-29). See also Warren Dep. TR 57.

54. Plaintiffs and the TA are agreed on the following finding:

> About 20% of the persons participating in its alcoholism program are doing so on a voluntary and confidential basis.

We are not agreed as to the total number of persons actively participating in the program.

Plaintiffs submitted the following proposed finding:

> Approximately 6.5% of the TA's work force is actively participating in the alcoholism program of the Employee Counseling Service.

The TA has submitted the following proposed counter-finding with which plaintiffs do not agree:

> The counselling service has a record of the names of about 2,300 employees of which about 265 are presently actively participating in the program, including regular reporting and AA membership.

Plaintiffs submit the following in support of their position.

Warren, Director of the Alcoholism Program, testified that 23-2400 TA employees were <u>actively</u> participating in his program (Dep. TR 61).

During questioning at the TA disciplinary hearing respecting plaintiff Beazer, defendant McLaren, TA Executive Officer for Labor Relations and Personnel, made absolutely clear that approximately three thousand TA employees were then

under active treatment in the TA alcoholism program:

Q. What percentage of employees are involved in the alcohol program?

A. [McLaren] I think around three thousand, now, under the Counseling Service.

Q. Three thousand out of what?

A. [McLaren] Well, forty-two, forty-three, forty-four thousand.

Q. You mean the total?

A. [McLaren] Yes, that covers all people.

Q. Does that represent only the people being treated at the present time?

A. [McLaren] Yes, under active treatment. When we say "treatment", they are working with the Counseling Service. (emphasis added)

(TA Disciplinary Hearing of Plaintiff Beazer TR [PX 13] 117-18)

55. Plaintiffs submitted the following proposed finding:

> A TA employee who has been demoted due to an alcoholism problem and violation of Rule 11(a) is generally eligible for restoration to a safety sensitive position after three years of successful participation in the Counseling Service Program. In exceptional cases the three year requirement may be waived. Over the years substantial numbers of persons from the Counseling Service Program have been restored to safety sensitive positions. Many of these persons have been eligible for and received subsequent promotions.

The TA has not agreed with this in its entirety but has agreed to the following which is included within plaintiffs' proposed finding:

> An employee demoted for a violation of Rule 11(a) may be restored to an operating position after three years of full cooperation with the counseling service.

In support of their entire proposed finding plaintiffs submit the material cited supra in general support of Nos. 47-56. In addition, we submit Warren's testimony to the effect that graduates of his program had successfully been employed in "every position in the Authority", including that of Towerman (Dep. TR 27) and positions dealing with high voltage (ibid).

56. Plaintiffs have submitted the following proposed finding with which the TA has not agreed:

> An active alcoholic may suffer from symptoms such as amnesia blackouts, loss of control after drinking, and erratic unpredictable behavior. The only known treatment for alcoholism is total abstention from the use of alcohol. Even minimal use of alcohol by a former active alcoholic may result in the almost instant resumption of the disabling physical manifestations of alcoholism.

In support plaintiffs submit that the seminars given for high-ranking TA officials by alcoholism experts at the TA's invitation provided the TA with documentation of the disfunctional symptoms of alcoholism, and the need for an alcoholic in treatment t totally abstain from the use of alcohol. See reports of TA seminars on alcoholism, June 21, 1972 and November 2, 1972, (PX 14). The psychomotor disfunction of alcoholics is well known and widely documented. See e.g., the report on Alcohol and Highway

Safety contained in the Second Special Report to the United States Congress on Alcohol and Health, prepared by the United States Department of Health, Education and Welfare. PX 15).

Warren testified specifically to the severe problems of recidivism regarding alcoholics:

Q. No sure guarantee?

A. I am a alcoholic myself. And there is no sure guarantee for me and I haven't had a drink in 17 years and I can go outside now and pick up a drink.

Q. What happens to an alcoholic who hasn't had one in a long time, does he go back into the alcoholic syndrome?

A. It does. It is the same as if I had continued to drink for 17 years. It would be the worst type of drinking. I will not return to any kind of social drinking.

(Warren Dep. TR 31)

He testified that alcoholism was:

"a physical disease coupled with a mental obsession. It is physical and mental and spiritual. We deteriorate in three different areas."

(Dep. TR 51)

See generally Warren Dep. TR 51-53. He further testified:

Q. Is there any such thing as a cured alcoholic?

A. I have never heard of it. I haven't had that experience, but I heard recently there is a physician in England who has cured two people and I have serious doubts about that.

(Warren Dep. TR 53)

See also Warren Dep. TR 53-54; Dep. TR 77 ("...in alcoholism, there is no cure.")

McLaren cited experts relied on by the TA as believing that alcoholism is a matter of chemical disorder or imbalance resulting in alcoholics' inability to control their behavior and requiring that they abstain totally from alcohol in the future. (McLaren Dep. II TR 145)

There was additional testimony as to e.g., black-outs and permanent physical damage associated with alcoholism:

Warren Dep. TR 36-37;

McLaren Dep. II TR 141-42; 144.

McLaren also testified that there was a need to know a lot more about alcohol rehabilitation. McLaren Dep. I TR 94.

57. Plaintiffs and the TA are agreed on the following finding:

> Some employees who may be taking amphetamines under the supervision of and prescribed by a physician may continue to do so with the written permission of the medical director depending upon all the circumstances.

Plaintiffs have submitted the following proposed findings as to which the TA has not agreed or has not indicated its position:

> Persons who are taking amphetamines under the supervision of and prescribed by a physician are allowed to stay in their TA job unless the job directly involves actual operation of trains or buses.
>
> Persons who are taking amphetamines under the supervision of and prescribed by a physician

who are in positions for which the TA considers them medically unfit are not automatically dismissed from employment but are transferred to other positions.

In support, see generally Lanzetta Dep. TR 49-51.

V. NATURE OF METHADONE TREATMENT

58 - 66

There is no agreement between plaintiffs and the TA as to Nos. 58-66. Plaintiffs' proposed findings, set forth below, will have to be proven in large part at trial.

In support of proposed findings 61-66, infra, plaintiffs submit herewith:

New York State Drug Abuse Control Commission, Requirements for Operating a Methadone Program, 14 NYCRR §2021.1 et seq. (1974), PX 16; 21 C.R.F. §130.44, PX 17.

58. Methadone maintenance is a treatment modality administered to persons formerly addicted to the use of heroin. The ingestion of methadone pursuant to participation in a methadone maintenance program eliminates the former heroin addict's psychological and physiological craving for heroin, and establishes a "blockade" shielding him from the mental and physical effects of heroin. Methadone maintenance programs combine the administration of methadone with intensive counseling to achieve rehabilitation of former heroin addicts. Methadone maintenance is designed to be a long-term, and in some cases life-long, mode of treatment.

59. Methadone has been used for the maintenance treatment of former heroin addicts for approximately a decade. The efficacy of methadone maintenance is widely recognized, and it has been adopted and is practiced throughout the United States.

60. After achieving favorable results with experimental programs, New York State became committed to methadone maintenance on a large scale approximately five years ago, and methadone maintenance is now the dominant form of treatment administered to former heroin addicts in New York State. In the New York City area alone, approximately 37,000 persons are participating in duly licensed and authorized methadone maintenance programs.

61. Under both federal and state law, the operations of methadone maintenance programs are strictly regulated, and participation in such programs is carefully monitored. For example, all methadone maintenance programs must have the following authorizations to operate:

(a) A license issued by the New York State Department of Health, Bureau of Controlled Substances Licensing;

(b) Establishment by the Public Health Council or approval of the Commissioner of Health of the State of New York under Article 28 of the New York Public Health Law, where appropriate;

(c) Approval by the New York State Drug Abuse Control Commission (DACC);

(d) Approval by the Food and Drug Administration of the United States Department of Health, Education and Welfare (FDA).

62. Approval of a methadone maintenance program by the FDA and DACC is contingent upon compliance with stringent and detailed regulations. Continued compliance with the FDA and DACC regulations is monitored through the submission by methadone maintenance programs of regular written reports. Compliance is also monitored through regular on-site inspection of methadone maintenance programs by the FDA and DACC. If a methadone maintenance program does not comply

with either FDA or DACC regulations, its approval will be withdrawn by both the FDA and DACC and it will be ordered closed by the FDA. Withdrawal of approval of a methadone maintenance program by the FDA or DACC may result in the criminal prosecution of the program's operator.

63. Pursuant to FDA and DACC regulations, during a person's first three months of participation in a methadone maintenance program, he or she must ingest methadone daily at the program's facility under the observation of program officials, at least six days per week. After demonstrating satisfactory adherence to the methadone maintenance program's requirements for at least 3 months, and showing substantial progress in rehabilitation by participating actively in the methadone maintenance program's activities and/or by participating in educational, vocational and homemaking activities, those program participants whose employment, education, or homemaking responsibilities would be hindered by daily attendance may, pursuant to FDA and DACC regulations, be permitted to reduce to three times weekly the number of times that they must visit the program's facility and ingest methadone under observation. With continued adherence to the requirements of the methadone maintenance program in which they are enrolled and progressive rehabilitation for at least two years after entrance into methadone maintenance treatment, program participants may be allowed to reduce to two times weekly the number of times they must visit the program's facility and ingest methadone under observation. Under FDA regulations, no persons participating in a methadone maintenance program may visit that program less than two times per week except when exceptional circumstances, such as acute illnesses or family crises, arise, in which case the exception must be reviewed monthly, and DACC must be notified that it has been granted.

64. Pursuant to FDA and DACC regulations, urinalyses are performed randomly at least weekly on each methadone maintenance program participant in order to detect the abuse, if any, of heroin, barbiturates, amphetamines or other drugs. Participants are also monitored for drug abuse by the program's counselors, nurses and other personnel proficient in detecting the symptoms of drug abuse. Data gathered in a systematic and comprehensive manner from methadone maintenance programs

in the New York City area indicated that over 80% of the programs' participants do not abuse drugs at all after the commencement of their participation in such programs.

65. In addition to dispensing methadone to participants, methadone maintenance programs also provide, pursuant to FDA and DACC regulations, a comprehensive range of medical and rehabilitative services to program participants. A complete physical examination and psychological evaluation is administered to every person seeking admission to a methadone maintenance program. A methadone maintenance program counselor, social worker, or licensed professional medical staff member also interviews every persons seeking admission to a methadone maintenance program and takes a complete psycho-social history. Mandatory rehabilitative services provided for methadone maintenance program participants include both individual and group psychological and rehabilitation counseling, as well as vocational counseling. In addition, when the methadone maintenance program clinic administrator-supervisor or a case supervisor determines that a program participant requires more sophisticated services than are available at the program, the participant is referred to other individuals or agencies, with whom formal agreements have been made for the provision of such services as surgery, psychiatry, family planning, child placement, marriage counseling, family therapy, psychological consultation and legal assistance.

66. Pursuant to FDA and DACC regulations every methadone maintenance program administrator-supervisor schedules weekly interdisciplinary staff conferences during which the responses of individual program participants to the program are discussed, recommendations by staff members are considered, and appropriate changes in the services rendered to program participants are determined. The progress of each participant is reviewed at least once each month at such a staff meeting.

VI. EMPLOYABILITY OF THE CLASS

67 - 68

There is no agreement between plaintiffs and the TA as to Nos. 67-68. Plaintiffs' proposed findings, set forth below, will have to be proven at trial.

> 67. Scientifically designed and administered studies have uniformly found that ingestion of methadone pursuant to participation in a duly licensed and authorized methadone maintenance program has no adverse effect on a person's performance effectiveness, including both intellectual functioning and psychomotor function as measured by rotary pursuit skill, reaction time and driving ability tests. The intellectual and psychomotor functioning of methadone maintenance program participants is at least equivalent to the intellectual and psychomotor functioning of the general population.
>
> 68. Drug-free former addicts and successful participants in duly licensed and authorized methadone maintenance programs are fully employable and, in fact, are indistinguishable from other workers with similar capacities. This has been demonstrated by surveys and controlled experiments, but more importantly, by the actual experience of both public and private employers who have hired such persons. The suitability of ex-addicts for TA employment is further demonstrated by the fact that hundreds of ex-addicts currently work for or have in the past worked successfully and undetected for the TA in a wide variety of job titles.

In partial support of this para. 68 plaintiffs submit herewith the Report of the New York State Temporary Commission to Evaluate the Drug Laws, which conducted extensive hearings with respect to the employability of former addicts as well as the actual experience of many employers in the New York area,

and concluded generally that rehabilitated addicts were fully employable and specifically that the TA's drug policy was irrationally discriminatory. New York State Legislative Document No. 10 (1973) PX 18. See also PX 19.

VII. RACIAL IMPACT

69 - 71

There is no agreement between plaintiffs and the TA as to Nos. 69-71. Plaintiffs' proposed findings are set forth below:

> 69. The population of former drug abusers in the New York Standard Metropolitan Statistical Area contains a substantially and significantly greater proportion of Blacks and Hispanics than the civilian workforce at large for the New York Standard Metropolitan Statistical Area. Hence, the probability of a Black or a Hispanic person being denied employment by the TA on the basis of its policy respecting the employment of former drug abusers is substantially and significantly higher than the same probability for his white counterpart.
>
> 70. The population of former drug abusers who have been dismissed by the TA on the basis of its policy respecting the employment of former drug abusers have been overwhelmingly Black and Hispanic, and disproportionately Black and Hispanic as compared with the racial and ethnic composition of the general TA workforce. The population of former drug abusers now working for the TA who will be dismissed upon discovery by the TA on the basis of its policy respecting the employment of former drug abusers is overwhelmingly Black and Hispanic, and disproportionately Black and Hispanic as compared with the racial and ethnic composition of the general TA workforce. Hence, the probability of a Black or Hispanic TA employee being dismissed from

TA employment on the basis of the TA's policy with respect to the employment of former drug abusers is substantially and significantly higher than his white counterpart.

71. The TA's policy with respect to the employment of former drug abusers has a significant and substantial discrimination impact upon Black and Hispanic persons otherwise eligible to commence employment with the TA or to continue in its employ.

In support of the above proposed findings Nos. 69-71, plaintiffs have submitted the following findings 71(a)-(c), as to which the TA has not indicated its position.

71 (a). The racial breakdown of TA employees referred to Dr. Trigg pursuant to the arrangement described in paragraph 27, supra, is as follows:

Black	72.2%
Hispanic	9.3%
White	18.5%

(In support, plaintiffs submit herewith PX 20)

71(b) Statistics available from the United States Department of Commerce, Bureau of the Census indicate that the civilian workforce* for the New York Standard Metropolitan Statistical Area** is

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* "Civilian workforce" is defined by the Bureau of the Census to include all non-military persons who are either employed, or looking for and available to accept employment.

** "Standard Metropolitan Statistical Area" (SMSA) is a designation utilized by the Bureau of the Census. Counties contiguous to a county or counties containing a city of 50,000 persons or more are included in a SMSA if, according to criteria established by the Bureau of the Census, they are socially and economically integrated with the central city. The New York SMSA includes New York City and Westchester, Rockland, Nassau and Suffolk Counties. It comprises the area from which the TA and MaBSTOA can reasonably be expected to draw their 49,000-51,000 employees.

approximately 15.0% Black and 5.1% Hispanic.* The racial composition of this population can be assumed to approximate the racial composition of the population eligible for employment with the TA and MaBSTOA save for their policy of excluding all present and past methadone maintenance progam participants.

71(c) The methadone maintenance population, essentially a sub-group of the civilian workforce, is approximately 38.5% Black and 22.5% Hispanic.** It has been reliably estimated that active heroin addicts are 60-70% Black or Hispanic.***

In further support of proposed findings 69-71, plaintiffs submit Dr. Lanzetta's testimony that approximately 75-80% of the persons dismissed from TA employment because of drug use were Black or Hispanic (Lanzetta Dep. TR 79-80), and that, while he was uncertain as to the racial percentages of applicants denied TA employment because of drug use he was certain that the majority were Black or Hispanic (Dep. TR 84).

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* See 1970 Census of Population, Vol. 1 - Characteristics of the Population, Part 34 - New York, Section 2 Tables 164 and 165.

** Records regarding the ethnic composition of the methadone maintenance population are maintained by the Rockefeller University Methadone Information Center. Under contract to the New York State Drug Addiction Control Commission, the center is responsible for gathering extensive information concerning methadone maintenance in the New York City metropolitan area. In a letter dated August 27 , 1974, addressed to counsel for plaintiffs a responsible official of the Center confirmed the racial/ethnic composition of the methadone maintenance population. See PX 21.

*** See Dealing With Drug Abuse, A Report to the Ford Foundation 4 (Praeger 1972).

These statistics together with the statistics cited supra, paras. 71(a)-(c), constitute the best statistics currently available to plaintiffs on the actual impact of the TA's drug policy on plaintiffs' class because of defendant TA's refusal to respond to plaintiffs' requests on discovery for either:

(1) The exact racial statistics on TA applicants and employees denied or dismissed from employment for drug-related reasons; or

(2) The records of TA applicants and employees denied or dismissed from employment for drug-related reasons. These records would have permitted plaintiffs to compile the exact racial statistics. However the TA refused to produce those records (even with names and other identifying information deleted) and, on plaintiffs' motion for sanctions and to compel discovery, the Court ruled that the TA was not required to produce the records (Nov. 16, 1973 hearing, TR 30-32).

VIII. THE FEDERAL INTEREST

72 - 73

There is no agreement between plaintiffs and the TA as to Nos. 72-73. Plaintiffs' proposed findings, set forth below, will have to be proven at trial.

72. Federal policy for control of drug abuse includes the development of a comprehensive and coordinated long-term strategy for the rehabilitation of victims of drug abuse. Employment is generally recognized to be crucial to the sustained rehabilitation of former drug abusers.

In partial support of No. 72, plaintiffs submit Warren's testimony that employment is an important aspect of alcoholic rehabilitation as far as the TA alcoholic program is concerned. (Dep. TR 30) He also testified that he had been an active alcoholic earlier in his employ at the TA and that continued employment with the TA was the primary motivation to deal with his alcohol problem (Dep. TR 44).

73. The TA's policy with respect to the employment of former drug abusers discourages persons from participating in drug rehabilitation programs and penalizes persons who do so participate.

IX. NAMED PLAINTIFFS

While the TA has indicated a good deal of agreement with plaintiffs' proposed findings No. 74-110 & 116, plaintiffs also proposed a large amount of material not agreed to by the TA. Accordingly, plaintiffs agree with each of the TA's proposed counter-findings only insofar as set forth below and only with the additions and qualifications bracketed below:

74-87. The plaintiff Carl A. Beazer, a Black born January 17, 1935, was first employed by the TA as a Car Cleaner on May 11, 1960 and on March 1, 1961 was appointed provisionally a Conductor, which appointment was made permanent on October 1, 1962. [The appointment as

Conductor was a promotion based on an assessment of his record, together with his performance on written and practical exams designed to test a candidate's ability to perform the duties of the position being tested for.] On May 15, 1966, he was [similarly] promoted to the position of Towerman. On or about August 30, 1971 the United States Veterans Administration [in response to a routine request for hospital records and in violation of federal law] reported to the TA that Beazer was a participant in a methadone maintenance treatment program conducted by the VA. He was suspended from duty on September 1, 1971 and on October 4, 1971 was served with disciplinary charges pursuant to §75 of the Civil Service Law of the State of New York. It was specified that he had violated TA Rule 11(b) which prohibits the use or possession of certain drugs by employees, including narcotic drugs, without the written permission of the Medical Director. A hearing of the charges was held in November, 1971 and on November 26, 1971 the Hearing Referee recommended that the charges be sustained and that Beazer be dismissed from service effective that day. At the hearing, Beazer admitted his participation in a methadone maintenance treatment program and also his use of heroin while employed by the TA as a Towerman, but urged that his employment record warranted a penalty less than dismissal. In recommending dismissal the Hearing Referee noted that Beazer's disciplinary record included 8 Cautions and 3 Warnings for violations, 5 of which were functional. As of June 20, 1971, Beazer had a sick leave balance of 0 days out of a possible 144 accumulated at the rate of 12 days per year for each year of service. [The Hearing Referee did not rely on Beazer's disciplinary record. Beazer's work performance during the entire period he was employed by the TA was entirely competent as noted by the Impartial Review Board. PX 5. Beazer's dismissal was predicated solely on the TA's policy with respect to the employment of former drug abusers. See Decision of Hearing Referee Daniel Gutman, dated November 26, 1971. A TA employee can remain in good standing even if he has some "warnings" or "cautions" in his record, and, in fact, most TA employees eventually accumulate a number of "warnings" or "cautions" in their record.]

Beazer appealed the recommendation of dismissal to the TA's Impartial Disciplinary Review Board,

composed of 3 members, one a representative of the TA, one a representative of the Transport Workers Union and the third member and also chairman, Samuel R. Pierce, Esq., former Justice of the General Sessions Court of the County of New York. The board in its "Opinion and Recommendation" noted that "[f]rom all the evidence presented, it would appear that Mr. Beazer handled his job competently while participating in the methadone program."

Based solely on the TA's rules and past practice [by which it felt bound], the board recommended his dismissal [but] also [strongly] recommended that the Union and the TA reconsider the rules relating to drug usage and recommended that Beazer be re-employed "if it is found that an employee using methadone can work in some capacity for the TA." [The Board especially urged the TA examine the merits of methadone treatment.] On August 15, 1972, the TA acting by the defendant W. B. McLaren, Executive Officer, Labor Relations and Personnel, adopted the recommendation of the Hearing Referee which had been approved by the Review Board and dismissed Beazer from its employ effective November 26, 1971. [The opinion of the Impartial Disciplinary Review Board has been marked as PX 5.]

The Hearing Referee in his opinion stated that there was "credible evidence" that Beazer was "adhering"to the requirements of the methadone maintenance treatment program in which he was participating, [and noted that he was described as an "excellent patient"]. The Hearing Referee also said that, in his opinion, that while "employment in gainful occupation is important to the Methadone patient...[e]mployment should be sought out and provided, but not in the service of a public agency which has the responsibility of running a railroad with operations of the size and magnitude of the Transit Authority."

Beazer was a heroin addict for 15 years prior to his entry into the VA methadone program and had been detoxified [in short term programs] 5 times; twice at Beth Israel Hospital, once at Interfaith Hospital, and twice at Harlem Hospital, and on each occasion returned to the use of narcotic drugs within a short period of time. [Beazer had never been maintained on methadone or enrolled in a methadone maintenance treatment program prior to his entry into the

Veterans Administration Methadone Maintenance Treatment Program, where as noted by the Hearing Examiner, he was an excellent patient. For more than 3 years Beazer has been completely free from illicit drug use.] Beazer's successful record of participation in the Veterans Administration Methadone Maintenance Treatment Program is illustrated by VA Hospital records, including his urinalysis records and a "Patient Report Summary" prepared by his Rehabilitation Counselor. PX 22.

[After his dismissal from the TA, plaintiff Beazer continued his excellent record of participation in the Veterans Administration program, and in November, 1973, he ceased methadone maintenance after a gradual process of detoxification. Since his detoxification, plaintiff Beazer has voluntarily continued to attend the Veterans Administration program for periodic counseling. During this attendance he has voluntarily given urine specimens which have been analyzed for evidence of drug abuse and have invariably shown the complete absence of such abuse.

Following Beazer's suspension by the TA, he was employed by the Veterans Administration until November of 1972 in their drug detoxification program as a rehabilitation technician counselor, providing individual counseling to persons enrolled in that program and group counseling to the families of such persons. Plaintiff Beazer voluntarily left his position at the Veterans Administration with a record of having consistently performed the duties of his position in an entirely competent fashion.

In November, 1972, plaintiff Beazer was employed by the Addiction Research and Treatment Corporation as an Intake Supervisor. The Addiction Research and Treatment Corporation conducts various treatment and research programs related to drug abuse. In fulfillment of his duties to the Addiction Research and Treatment Corporation, plaintiff Beazer was responsible for keeping records and performing other functions relating to the admission of persons to the Corporation's drug treatment programs.

In July, 1973, plaintiff Beazer voluntarily left the employ of the Addiction Research and Treatment Corporation where his job performance was

at all times entirely competent and commenced employment with the Wildcat Service Corporation where he continues to be employed at the present time. Plaintiff Beazer's original position at the Wildcat Service Corporation was one of supervisor, from which he was promoted to Deputy Division Chief, and then to Acting Division Chief. As Acting Division Chief, Beazer is responsible for assisting in the supervision of approximately 130 workers performing maintenance work under contract to various agencies of the City of New York, including the Police and Fire Departments.

Notwithstanding his excellent employment record subsequent to his dismissal by the TA, plaintiff Beazer has earned considerably less in the past two years than he would have had he been retained in the TA's employ.]

88-92. The plaintiff Francisco Diaz, an Hispanic was born November 20, 1934. On December 3, 1968, he was admitted to a methadone maintenance treatment program conducted by the Beth Israel Medical Center, with a history of using heroin for 18 years. On February 28, 1970 he took a written examination conducted by the City Civil Service Commission for the position of Maintainer's Helper - Group D with the TA. He passed the examination and was called for preappointment processing on June 5, 1970. He informed the Medical Department that he was a participant in a methadone maintenance treatment program.

A letter dated June 5, 1970, was sent to the City Department of Personnel by Dr. Harold L. Trigg, a psychiatrist and Associate Director of the Bernstein Institute (who in 1972 became a drug abuse consultant to the TA), stating that Diaz was an "excellent patient and [was] totally free of illicit drug use." (PX 23) He recommended his employment as a Maintainer's Helper. Diaz was passed over for appointment as a Maintainer's Helper [solely as a result of the TA's policy with respect to the employment of former drug abusers.

Diaz's TA medical record is stamped "med. rej." and "rejected by Doctor." His TA Medical Department form bears the following notation under "diagnoses" "attends methadone clinic." PX 19.]

Subsequently, Diaz appealed to the Commission which [dismissed] the appeal on September 22, 1970.

Prior to his entry into the Beth Israel Methadone Maintenance Program in February 1968, Diaz had been detoxified of drugs [in short term programs] 4 times in the period between 1952 and 1968. Three of such detoxifications took place at Riverside Hospital and one at the Federal Drug Facility then at Lexington, Kentucky. On each of the 4 occasions after being detoxified he returned to using drugs. [Diaz had never been maintained on methadone or enrolled in a methadone maintenance treatment program prior to his entry into the Beth Israel methadone maintenance treatment program, where he was and is an excellent patient. For approximately 5 years Diaz has been free from illicit drug use.]

[Plaintiff Diaz was employed as a sheet metal mechanic from 1962 to 1973. He is currently employed as a helper in a commercial bakery. In both of these positions Diaz has consistently performed competently and satisfactorily. Nevertheless, Diaz has earned considerably less in the last four years than he would have had he been hired by the TA.]

93-100. The plaintiff Malcolm Frasier is Black and was born on March 23, 1944. In February 1971, he sought employment as a Bus Operator with MaBSTOA after having taken and successfully passed a written examination therefor. During pre-appointment processing MaBSTOA learned not from Frasier but from the Motor Vehicle Bureau that his motor vehicle operator's license had been suspended on January 14, 1971 for failing to answer a traffic summons. Frasier was not appointed. [Frasier had not received notice from the Motor Vehicle Bureau at the time of his pre-appointment processing that his licenses had been suspended. This incident was not the basis for his subsequent disqualifications by the TA which are the subject of this lawsuit.]

In October 1972, Frasier entered a methadone maintenance program sponsored by the Mary Scranton Foundation. He left the program detoxified on March 19, 1973. Prior thereto he had passed a second written examination for the position of

said Regional Instruct[illegible] as soon as feasible.

Bus Operator with MaBSTOA and reported on March 9, 1973 for pre-appointment processing. Upon disclosing that he was a participant in a methadone maintenance program he was told by MaBSTOA personnel, including Personnel Administrator, Thomas Grainger, that he would not be appointed a bus driver. [On March 14, 1973, Grainger approved a MaBSTOA "Status Report" stating that Frasier was "rejected by Authority based on Medical findings Applicant is presently engaged in Methadone Program. Company Policy not to hire applicants engaged in Methadone Program. PX 25.] Frasier was sent a letter dated March 14, 1973 by Mr. Grainger informing him he would not be employed because "[his] background [did] not meet the standards established for this position." Subsequently, an attorney representing him was also informed in writing that his appointment as a bus driver was not made "because of medical background based on information he divulged to [the] Medical Director."

In March, 1973, Frasier was notified by MaBSTOA that his name was on an eligible list for the position of Bus Cleaner. [On March 29, 1974, Dr. G. Salazar, Clinical Director of Frasier's methadone maintenance treatment program wrote a letter to the TA attesting to Frasier's excellent reocrd in the program. PX 26.] Frasier reported for pre-appointment processing on April 2, 1973 and was told that he would not be appointed because of his drug history. [At the time of this processing Frasier had been completely detoxified from methadone after a two month long process of detoxification. PX 26, 27] Later he was informed in writing that "[his] background [did] not meet the standards established for this position."

[During the 4 year period] prior to his entry into the methadone maintenance program Frasier had used narcotics. In early 1972 he participated in a detoxification program at Joint Diseases Hospital and in June 1972 [he participated in a detoxification program] at Metropolitan Hospital. [Both of these programs were short-term detoxification programs, unrelated to methadone maintenance treatment.]

[Plaintiff Frasier has held several positions of employment over the last ten years, and in all such positions has demonstrated his ability to perform as a competent worker. Several of these

positions have been as truck driver, and one has been as a taxicab driver. Since February, 1974, plaintiff Frasier has been employed as a shipping clerk and has consistently performed his duties in a competent manner.

Notwithstanding his excellent employment record, plaintiff Frasier has earned considerably less in the past year than he would have had he been hired by the TA.]

101-110. The plaintiff Jose R. Reyes, a Hispanic, was born April 26, 1945. He was first employed by the TA on April 29, 1968 as a Maintainer's Helper-Group B. On April 26, 1970 he was promoted to the position of Ventilation and Drainage Maintainer [based on an assessment of his record, together with his performance on written and practical exams designed to test a candidate's ability to perform the duties of the position being tested for.] [On February 26, 1971 he was admitted to the Rapid Induction Unit of the Beth Israel Methadone Maintenance Treatment Program. On April 19, 1971, he was transferred to the Beth Israel Methadone Maintenance Treatment Program, at the St. Clair Hospital.] On October 12, 1971 his department referred him to the TA's Medical Department. A [medical examination and] urinalysis [were conducted but there was no conclusive evidence of drug use. PX 28. A second medical examination was scheduled for November 1, 1971.] [A] second urinalysis on [that date] showed positive for methadone [only] and [a nasal smear which would have revealed the use of cocaine or other drugs showed negative. PX 29] Upon being questioned, Reyes stated he was a participant in a methadone maintenance treatment program. [Defendant Lanzetta told Reyes at that time that he would be suspended from duty because of that participation.] He was suspended from duty [immediately] and on December 13, 1971 disciplinary charges were preferred against him for violating the TA's [drug policy as set forth in plaintiffs' proposed finding No. 15.] A hearing of the charges was conducted on January 19, 1972. Reyes admitted he was on the program but urged that that fact should not justify his dismissal. There was testimony by a psychologist, Norman Gordon, that certain psychomotor tests administered to Reyes showed that he performed "equal to or better than others tested in the laboratory." [Dr. Gordon also testified] that ["the best test is experience with the person, that is, actual job history and [illegible] actually performs on the job."] He

opined that Reyes was capable of performing any job that he was "qualified for." There was also testimony that Reyes had an excellent record of participation in the methadone maintenance treatment program.

Finding [that Reyes was participating in a methadone maintenance treatment program,] the Hearing Referee recommended that Reyes be dismissed from service effective January 20, 1972. In his recommendation the Referee noted that Reyes had 2 departmental disciplinary hearings during his service of less than 4 years, one in 1969 for drinking alcoholic beverages on the job, for which he was suspended one day, and 6 Cautions for poor attendance, culminating in a department hearing for such violations in 1970, for which a Reprimand was administered. [The Hearing Referee did not rely on Reyes' disciplinary record, and Reyes' dismissal was predicated solely on the TA's policy with respect to the employment of former drug abusers. A TA employee can remain in good standing even if he has some "warnings" or "cautions" in his record, and, in fact, most TA employees eventually accumulate a number of "warnings" or "cautions" in their record.]

Reyes has used hard drugs [in the past, but he has been free of drug abuse since he entered the Beth Israel Methadone Maintenance Program.
There was testimony at his disciplinary hearing by the Medical Director of the St. Claire program that he had an excellent record, had never failed to come in to get his methadone as scheduled, and did not use drugs other than methadone. (PX 4, p. 27)

Plaintiff Reyes has been employed by the Mt. Sinai Methadone Maintenance Program as a social health advocate from January 17, 1972 to date. In this position, Reyes' duties include acting as a liason between participants in the program and social workers, and directly assisting in the resolution of employment, family, legal, housing and welfare benefit problems encountered by participants. Reyes has performed these duties in an entirely competent manner at all times.

Notwithstanding his excellent employment record, plaintiff Reyes has earned considerably less in the past three years than he would have had he remained in the TA's employ.]

116. Vannie A. Smith, age 44, [a member of the class herein,] was dismissed from the TA's employ as a Conductor on August 14, 1974, upon [findings] that he had [participated in a methadone maintenance treatment program] and accordingly had violated the TA's [drug policy] and had violated the TA's attendance regulations. There was evidence that Smith had been enrolled in a methadone maintenance program for four years from 1969 to 1973 [and that he had been detoxified from several months before the charges based on his prior drug history were preferred against him. There was also evidence presented that during his entire period of participation in his methadone maintenance treatment program Smith had been entirely free of drug abuse.] With respect to [the] attendance violations, [evidence was presented at the hearing that but for Smith's violation of the TA's drug policy charges based on those violations would not have been preferred against him at a trial board hearing.] It was noted by the Hearing Referee in his decision that Smith was first employed in 1960 and had accumulated some 54 recorded cautions for attendance violations, and had been given 12 warnings, 4 departmental hearings and 2 trial board hearings for the same reason and after the second trial board hearing had been warned that future charges, if sustained [by a trial board] would result in dismissal. [But for Smith's violation of the TA's policy against use of methadone, even as a part of a duly licensed and authorized methadone maintenance treatment program, Smith would not have been dismissed.]

IX. SUMMARY

111 - 115

Plaintiffs have proposed the following findings with which the TA has not agreed:

111. The absolute TA policy with respect to the employment of former drug abusers has not been justified as job-related and cannot be so justified. The policy is not necessary to the safe and efficient operation of the bus and subway system operated by the TA in New York City.

112. The administration of the TA's policy with respect to the employment of former drug abusers has a significant and substantial discriminatory impact on Black and Hispanic persons otherwise eligible for TA employment.

113. The administration of the TA's policy with respect to the employment of former drug abusers has resulted in the dismissal from and the denial of public employment without rational justification to persons who are in all respects qualified to perform the duties required in TA employment.

114. The TA's policy with respect to the employment of former drug abusers burdens and impedes participation in duly licensed and authorized methadone maintenance programs in derogation of federal policy and law.

115. As the result of the TA's policy with respect to the employment of former drug abusers, the named plaintiffs and the class they represent have suffered, are suffering, and will continue to suffer irreparable injury unless the injunctive relief that has been requested by plaintiffs is granted.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

72 Civ. 5307
(T.P.G.)

CARL A. BEAZER, et al.,

Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY, et al.,

Defendants.

UPDATE TO FEBRUARY 7, 1975 OF PLAINTIFFS' EXHIBIT 31 - COMPILATION OF THE AGREED TO AND CONTESTED FACTS TOGETHER WITH PLAINTIFFS' SUBMISSIONS REGARDING DOCUMENTATION CONTAINED IN THE RECORD

I. Proceedings to Date

Exhibit 31 was submitted by plaintiffs at the commencement of the trial of this action. The position of the other parties was indicated and certain changes were agreed to during the discussion of the document at pp. 126 et seq. of the transcript dated October 22, 1974. Since that date, other changes have been agreed upon among counsel. The following represents a "pocket part" to the original document, updating that document to February 6, 1975.

II. Position of the Defendants

A. The City Defendants

The City Defendants have, to the extent of their knowledge, agreed to the facts set forth by plaintiffs in the entire document, with certain modifications and additions set forth below.

B. The Transit Authority Defendants

The Transit Authority defendants have agreed only to those facts which it is indicated they agree to in the document, with certain modifications and additions as set forth below.

III. Modifications and Additions

1. The Class (p. 2) At the conference held in chambers on January 23, 1975, it was agreed that the class definition ordered by the Court in July of 1973 would be adhered to. Thus the class of plaintiffs consists of:

A. All those persons who have been dismissed from employment by the TA or MaBSTOA, or would in the future be subject to dismissal, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;

B. All those persons whose applications for employment with the TA or MaBSTOA have been rejected, or would in the future be subject to rejection, solely because of their present or past participation in duly licensed and authorized methadone maintenance programs;

C. All those persons who have been or will in the future be deterred from applying for employment with the TA or MaBSTOA by the TA's and MaBSTOA's policy of excluding from such employment all persons who are participating or who have participated in duly licensed and authorized methadone maintenance programs.

2. Page 8. The T.A. has further admitted:
" The medical director has not ever given permission to an employee to use methadone."

3. No. 16, Page 15. The T.A. now admits:
"The Transit Authority drug policies apply to all positions in the Transit Authority."

4. No. 24, Page 31. Counsel for plaintiffs and the city defendants have agreed to change the last paragraph to read:

A. the date of their placement on the

"Accordingly, 'drug free former addicts' and persons 'successfully participating in recognized chemo-therapeutic treatment programs' such as methadone maintenance are fully eligible for employment in virtually all positions in the mayoral agencies..."

5. Page 54. Counsel for plaintiffs and the city defendants have agreed to the following modification

2nd indented paragraph: add "by the Department of Personnel" after "conducted."

3rd indented paragraph: delete last sentence.

6. No. 46, Page 58. The T.A. has further admitted: "In fact whenever a reassignment [to a light duty position] was indicated medically, such was able to be made."

7. No. 71(a), page 76. Counsel for all parties now agree that:

"If called, Dr. Trigg, Director of the Beth Israel Methadone Maintenance Treatment Program, would testify to the data set forth in paragraph 71(a)."

No. 71(b). Counsel for all parties now agree that: the reference works cited contain the statistics set forth in paragraph 71(b).

No. 71(c). Counsel for all parties now agree that: "If called, Peter Vogelson, a responsible official of the Rockefeller University Methadone Information Center would testify to the statistics set forth in paragraph 71(c)."

Respectfully submitted,

ELIZABETH B. DuBOIS
ERIC D. BALBER
MAR C. MORRIL
(Legal
City of New York, Inc.)
271 Madison Avenue
New York, New York 10016
(212) 679-6502

MICHAEL MELTSNER
435 West 116 Street
New York, New York 10027

Attorneys for Plaintiffs

Dated: New York, New York
February 7, 1975

d-99 Thereby consent to the entry of the foregoing Order. However

250a

Letter of Elizabeth B. DuBois dated October 23, 1974 to Court (with Exhibit) (re Postal Service Settlement)

Regan Ex #19

LEGAL ACTION CENTER
OF THE CITY OF NEW YORK

271 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 679-6502

October 23, 1974

Board of Directors
ARTHUR L. LIMAN, *chairman*
R. PALMER BAKER, JR.
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Staff
ELIZABETH B. DuBOIS
ERIC D. BALBER
MARK C. MORRIL
MICHAEL E. SMITH

The Honorable Thomas F. Griesa
United States District Court
for the Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Beazer v. New York City Transit Authority (72 Civ. 5307)

Dear Judge Griesa:

I am writing in response to your inquiry as to the specific relief plaintiffs seek in this case. I would like to set forth briefly our thoughts regarding relief, as well as to submit for the Court's consideration, a consent order which has been agreed to by the parties in a case brought against the United States Postal Service challenging their previous policy of denying employment to all former addicts, including methadone maintained persons.

Plaintiffs have not heretofore indicated in any specificity the relief to which they think they are entitled, because it seemed to us appropriate to await the Court's decision regarding liability. At that point, if the Court rules that the TA's drug policy is in violation of law, we would expect to try to work out with the defendants a detailed order respecting relief and, if we cannot agree upon such an order, to submit a proposed order to the Court.

We have no intention of asking the Court to make a particularized finding as to the nature of each of the thousands of jobs within the TA. We feel that the evidence will demonstrate that former addicts, including methadone maintained persons, should not as a class be excluded from all TA jobs. We feel that the evidence will further demonstrate that a variety of employers who

have had experience with the employment of former addicts, including methadone maintained persons, in a variety of industries involving sensitive and safety-related work are able to make individualized determinations of former addicts' ability to perform which do not result in their permanent exclusion from employment even in sensitive positions.

We feel that once the evidence is in, and the Court is familiar not only with the TA's policies regarding problem drinkers, diabetics and epileptics, but also with other employers' policies, the parties will be in a better position to frame either an agreed-upon or proposed orders for specific relief, and the Court will be in a better position to decide on the merits of those orders. However I can at this point say that, given what we have learned in discovery, it does not appear to us that a study of the kind that the City defendants once indicated they were prepared to initiate would be useful.

The enclosed Postal Service consent order was worked out by the parties in the course of extensive negotiations. It has been finally approved by both the Postal Service and the Justice Department, as well as all plaintiffs. It was previously submitted to Judge Tenney who indicated that he had no problem with it. I have been authorized by counsel for defendants to submit it to your Honor and opposing counsel with the request that it be kept confidential until such time as the order has been submitted to and signed by Judge Tenney. We submit it to you at this time because of your clearly expressed interest in the nature of an order which might be entered in this kind of case. Obviously the Postal Service suit involved different parties and there are a variety of differences between the two cases. Moreover, since it was the result of settlement negotiations between the parties, it obviously represents a compromise from plaintiffs' viewpoint. Nonetheless, we thought the order would be of interest.

The order provides for the promulgation of Regional Instructions (attached as Exhibit 1), applicable nation-wide, which set forth the Postal Service's new policy regarding the employment of former addicts, including methadone maintained persons. Under this policy all applicants who have a history of drug addiction but have not abused illicit drugs within the 12 months prior to the date of their suitability determination, shall be considered suitable for postal employment, unless the Postal Service finds that employability is impaired by a lack of satisfactory rehabilitation or that the applicant is unsuitable for reasons other than past illicit drug use. (Regional Instructions, para. III B) Moreover, applicants who have been free of illicit drug use for two years or more, or have satisfactorily participated in a methadone maintenance program for

two years, are automatically deemed satisfactorily rehabilitated. (III B i). Applicants who have been free of illicit drug use for one year, or have satisfactorily participated in a methadone maintenance program for one year, are to be considered on an individualized basis. (III B ii). Current employees are not to be discharged, or denied transfer, assignment or promotion solely on the basis of former drug abuse or present participation in a methadone maintenance program. (VII).

This policy is to apply to all positions in the Postal Service, nation-wide. Most of these jobs, we were informed in the course of discovery, are jobs involving significant opportunities for theft, jobs in which performance is largely unsupervised. Others, of course, involve driving and the operation of machinery. (The exception in VIII for "Sensitive" positions is for a mere handful of very unusual, high-level administrative jobs.)

The remainder of the order provides for implementation of this policy as well as specific relief for the members of plaintiffs' class.

In closing I wish to stress that we submit this simply as an example of the kind of detailed order that can be worked out by the parties in this kind of case, once the basic decision regarding the need to change a policy has been made.

Sincerely,

Elizabeth B. DuBois
Attorney for Plaintiffs

EBDB:MB
enc.

cc: John G. de Roos, Esq.
Adrian P. Burke, Esq.

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WHEREAS, said motion for a class action determination is hereby withdrawn;

NOW THEREFORE, the parties having agreed to the terms of this Order and the Court, having been fully advised in the premises, having conferred with counsel for all parties, having reviewed all aspects of this case to date, having fully considered the desirability of disposing of the matters contained herein by means of a consent order and being satisfied that said order has been freely agreed to by the plaintiffs and defendants herein, it is hereby

ORDERED, that the following judgment be, and the same hereby is, made and entered as the final judgment in this action:

I. The Postal Service Regional Instructions annexed hereto as Exhibit 1 shall be issued by defendants and shall be delivered to all Post Offices and to all Postal Service authorities with responsibility for hiring and promotion decisions as soon as practicable and in any event within six (6) weeks of the date of this order unless good cause is shown for further delay;

A. The provisions of said Regional Instructions shall be effective immediately and shall supersede any other Postal Service Regional Instructions, regulations or other directives or issuances that may be in conflict with them;

B. The provisions of said Regional Instructions shall be incorporated into all relevant rules, regulations, manuals, instructions or handbooks relating to the recruitment, examination, selection or appointment of Postal Service employees, and any conflicting provisions contained therein will be appropriately revised or eliminated as soon as feasible. Postal Service application forms, questionnaires

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAUL OCASIO, JR., et al.,
Plaintiffs,
-against-
ELMER T. KLASSEN, et al.,
Defendants.

ORDER
73 Civil 2496 (CHT)

WHEREAS, on June 6, 1973, plaintiffs commenced the above-entitled action alleging that employment practices maintained by defendants respecting persons with histories of drug abuse unlawfully discriminated against plaintiffs and their class in violation of the Constitution and statutes of the United States; and

WHEREAS, counsel for plaintiffs have conducted comprehensive investigations of the facts, circumstances and transactions involved in this action, including extensive discovery and inspection of numerous records, documents and papers in connection therewith; and

WHEREAS, counsel for plaintiffs and counsel for defendants have met on numerous occasions since commencement of this action to conduct discussions aimed at developing a set of nationally applicable United States Postal Service (hereinafter "Postal Service") regulations authorizing and governing the employment of persons with histories of drug abuse by local Postal Service hiring authorities; and

WHEREAS, on October 2, 1973, plaintiffs moved, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, for an order allowing this action to be maintained as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure; and

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These instructions do not apply to positions which

and related documents will also be revised to accord with the said Regional Instructions as soon as feasible;

C. For a period of two (2) years from the date of this order, copies of any revised version of Postal Service Handbook P-11 or its successor, and of any other materials affecting the Postal Service installations listed in Exhibit 2 revised in accordance with paragraph IB supra, will be furnished to plaintiffs' counsel as soon as they are promulgated, as will copies of any application forms or questionnaires revised in accordance with the said Regional Instructions, pursuant to paragraph IB supra. Copies of any form letters which may be developed either nationally, or in the Postal Service installations listed in Exhibit 2, for the purpose of notifying applicants of suitability determinations based on drug abuse history and of their appeal rights pursuant to paragraph VI of the said Regional Instructions, will be furnished to plaintiffs' counsel as soon as they are developed.

II. All persons who because of a history of drug abuse[1] have been or will be denied career Postal Service employment at the Postal Service installations listed in Exhibit 2, subsequent to May 28, 1972 but prior to the issuance of the Regional Instructions attached hereto as Exhibit 1, shall be given an opportunity to be certified as persons eligible for relief under the terms of this Order (hereinafter "eligible persons") pursuant to the following procedure:

A. Within ninety (90) days of the date that the notice required by paragraphs V(A) and (B), infra, is

1 Defined to include all persons denied career Postal Service employment for drug-related reasons except those persons denied on grounds of abusing the use of illicit drugs on a current or habitual basis at the time of such denial, as referred to in paragraph III (A) of the Regional Instructions, attached hereto as Exhibit 1.

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completed, persons claiming to be such eligible persons, or their designated representatives[2], must mail a certified letter with return receipt requested to Michael Laraia, Director, Office of Employee Relations, United States Postal Service, Northeast Region, Main Post Office Building, New York, N. Y. 10098, stating that they wish to be certified as an eligible person. Such letter shall include the person's name, address, telephone number and Social Security number, together with a brief statement of his/her claim for eligibility and the office where employment was denied, if known;

B. Within fifteen (15) working days of the receipt of such letter claiming eligibility from each such person or his/her designated representative, the Postal Service Regional Labor Counsel, Northeast Region, or his designee must either certify such person as an eligible person, or must submit the person's name, address and telephone number together with the reasons for and evidence supporting opposition to such certification, to the special referee designated pursuant to paragraph III infra. As to each person whose application for certification has been received, the Postal Service shall immediately notify the applicant for certification, his/her designated representative, if any, and plaintiffs' counsel of its decision regarding certification, whether positive or negative. At the same time, plaintiffs' counsel shall also receive the addresses and telephone numbers of all such applicants. In the event that certification is opposed, the Postal Service shall simultaneously with notice of its decision provide both the applicant, and his/her designated representative, if any, with copies of all material forwarded to the special referee together with all personnel files or other records in the possession of the Postal Service pertaining to his/her employment application;

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2 Each person applying to be certified may designate in writing a representative to act on his/her behalf, which designated representative may or may not be an attorney and may, but need not, be plaintiffs' counsel.

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C. In those instances where reasons and supporting evidence opposing certification of an applicant are presented by the Postal Service to the special referee pursuant to paragraph IIB, supra, the special referee shall within seven (7) days send written notification to the person seeking to be certified as an eligible person with copies to his/her designated representative, if any, plaintiffs' counsel and the Regional Labor Counsel, that the applicant has fifteen (15) working days after the receipt of said notification to mail or otherwise submit written reasons and evidence to the special referee in support of his/her certification and to request a hearing if desired;

D. Upon the request of the applicant or his/her designated representative, a hearing shall be held before the special referee to resolve any factual or other disputes relating to the applicant's eligiblity. The applicant, his/her designated representative, if any, plaintiffs' counsel and the Regional Labor Counsel shall receive written notice at least seven (7) days prior to such hearing;

E. Said hearings shall be conducted in accordance with the following guidelines:

(a) the hearing shall be informal;

(b) no briefs or transcripts shall be required;

(c) there shall be no formal rules of evidence; and

(d) the hearing shall normally be completed within one day.

However, the special referee shall have the power to determine the particular procedures to be followed in any particular case and to modify these guidelines where appropriate;

F. The special referee shall make a prompt determination as to whether the applicant was denied career employment with the Postal Service subsequent to May 28, 1972 but prior to the issuance of the Regional Instructions attached

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hereto as Exhibit 1 at one of the Postal Service installations listed in Exhibit 2 because of a history of drug abuse as defined in paragraph II (n.1), p. 3, supra, and thus is to be certified as an eligible person. The special referee shall send written notification of each such determination, and of the reasons on which it is based, to the Regional Labor Counsel, the applicant, his/her designated representative, if any, and plaintiffs' counsel. Such notification shall be sent within sixty (60) days of receipt by the special referee of the applicant's written submission pursuant to paragraph IIC, unless this deadline is extended by agreement of the parties or for cause by the special referee upon the application of one of the parties;

G. Notwithstanding the provisions of paragraphs IIA-F, supra, the following persons shall be certified as eligible persons as of the date of this Order: Raul Ocasio, Jr., Radames Vazquez, Joseph D'Amico, William Johnson, William Gebhardt, George Hennessey, James Lee, Sarah Lynn Lewis, and Raymond E. Van Daley.

III. Pursuant to the agreement of the parties, Professor Daniel Collins of New York University Law School is hereby designated to serve as the special referee with the duties and powers set forth in paragraphs II(C)-(F), supra. Should Professor Collins be unable to fulfill the obligations of the special referee hereunder, a successor shall be designated by agreement of the parties, provided, however, that if the parties are unable to agree upon a special referee or upon a method of selecting a special referee within 30 days, he/she shall be designated by the Court. All costs and expenses of the special referee shall be paid by the Postal Service.

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IV. Any person certified pursuant to paragraph II, supra, shall be immediately eligible to be placed on special eligibility lists for career Postal Service employment, corresponding to the particular positions for which they were qualified by their previous written examination(s), which lists shall be compiled in the following manner and have the following effect:

A. Persons certified for the special eligibility lists shall immediately upon certification be provided with and be asked to fill out new application forms, together with the new personal history questionnaire provided for in the Regional Instructions attached hereto as Exhibit 1. Such persons will be subject to new suitability determinations by the Postal Service hiring authorities before being placed upon the special eligibility lists. The suitability criteria applied shall be those in effect on the date of the new suitability determination, including specifically the Regional Instructions attached hereto as Exhibit 1, and said criteria shall be applied as of that date. The new suitability determination shall be made as promptly as possible and in any event within ninety (90) days of the submission of new applications. Plaintiffs' counsel shall be notified simultaneously with the applicant and the applicant's designated representative, if any, as to the results of the suitability determination and shall receive copies of any correspondence or other written communications addressed to the applicant

relating to said determination;

B. In the event that the applicant is determined to be not suitable, said determination shall be appealable in the same manner and in accord with the same procedures as set forth in the Regional Instructions attached hereto as Exhibit 1. The applicant and his/her designated representative, if any, shall be provided with copies of all personnel files or other records in the possession of the Postal Service relating to that determination, except for the identity of confidential sources, material made confidential by statute, and sensitive non-drug related medical information. Any material not produced shall nevertheless be identified;

C. The special eligibility lists shall take precedence over all related eligibility lists for career Postal Service employment in effect for the Postal Service installations listed in Exhibit 2, and shall not expire until exhausted. Persons on the special eligibility lists shall be appointed to the first jobs that become available in positions for which they are eligible and qualified at said installations;

D. Persons shall be ranked on each such special list in an order corresponding with the date on which initial notification of rejection for Postal Service employment was sent (persons rejected at the earliest dates to be ranked first regardless of the date placed on the special eligi-

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bility list);

E. Persons on the special eligibility lists shall not be subject to the rule of one in three as provided in the P-11 Handbook, or its successor.

V. Within twenty-one (21) days after the entry of this Order, defendants shall give notice to all potentially eligible persons advising them of the entry of such Order and of the opportunity for renewal of their applications for employment with the Postal Service pursuant to Paragraphs II and IV, supra, by:

A. Mailing notice and application forms in the form provided in Exhibit 3 attached hereto to all persons who, after passing a written examination, had their applications for career employment with the Postal Service at the Postal Service installations listed in Exhibit 2 denied and who were initially notified of rejection subsequent to May 28, 1972;

B. Mailing notice in the form provided by Exhibit 4 to all the drug treatment programs listed in Exhibit 5.

C. The Postal Service shall also mail notice and application forms in the form provided in Exhibit 6 to any potentially eligible person or to any drug treatment program official who requests it.

D. The cost of providing notice pursuant to this paragraph V shall be paid by the Postal Service.

VI. The Postal Service shall submit to plaintiffs' counsel copies of the special eligibility lists as compiled and supplementary lists as compiled. Each such list shall indicate the status of all persons placed on the special eligibility lists pursuant to paragraph IV, supra, including:

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A. the date of their placement on the special eligibility lists;

B. the effective date of any appointment, and the name of position to which appointed; and

C. the date on which any person on any special eligibility list was removed from such list and the reason therefor.

Updated lists containing the information referred to above shall be submitted at sixty (60) day intervals until all special eligibility lists have been exhausted.

VII. Except insofar as the claims of plaintiffs Ocasio, Vazquez, D'Amico and Johnson are resolved by the terms of this Order, the claims they assert herein, are hereby dismissed with prejudice.

VIII. This Order shall not bind any person eligible for relief under its terms, except that any eligible persons who avail themselves of the benefits of this Order because of a previous denial of employment with the Postal Service shall be deemed to have waived any and all claims for relief arising out of that denial, including back pay, except as provided herein.

IX. This Order shall be fully enforceable in the same manner and to the same extent as any order of this Court by plaintiffs on behalf of any person claiming to be eligible for relief under the terms herein.

X. The Postal Service shall pay to plaintiffs costs in the amount of $8,500.00, it being understood that such payment shall not constitute an admission by the Postal Service of any liability for such costs and that acceptance of such payment shall not constitute an admission by plaintiffs that such amount represents the full costs to which they are entitled.

X. This Court reserves and retains jurisdiction herein for the purpose of construing, modifying or enforcing this Order.

Dated: New York, New York

, 1974

CHARLES H. TENNEY
United States District Judge

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On behalf of the parties to this case, counsel hereby consent to the entry of the foregoing Order. However, in the event that the terms of this Order shall, for any reason, not be finally approved and consummated, then this Consent shall have no further effect, shall be null and void, and it and all proceedings connected therewith shall be without prejudice to the rights of any party, and shall not be used in any subsequent proceeding, whether in this action or in any other action.

For the Plaintiffs Ocasio and Vazquez, by their attorneys

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For the Defendant United States Postal Service by its attorneys

PAUL J. CURRAN
United States Attorney for the
Southern District of New York

By: _____
SAMUEL J. WILSON
Assistant United States Attorney

_____
LOUIS G. COX
General Counsel

Letter of Elizabeth B. DuBois dated October 23, 1974

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REGIONAL INSTRUCTIONS

USPS HIRING POLICY CONCERNING APPLICANTS INVOLVED IN DRUG ABUSE

I. Purpose:

This statement of policy is issued for the guidance of hiring authorities investigating, reviewing and rating employment applications from persons with a history of illegal use of, dependence upon, or addiction to drugs. Its purpose is to establish standards for evaluating the overall suitability for postal employment of an applicant with a history of drug abuse consistent with the Postal Service's primary obligations to maintain the security of the mail and to assure public trust and confidence in the reliability and integrity of its employees.

II. Background:

The Drug Abuse Office and Treatment Act of 1972 (Pub. Law 92-255) provides that

> "No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse."

Although this does not apply to the Postal Service, the Postal Service recognizes that many former drug abusers are fully employable and that it is difficult for them to continue rehabilitative efforts without adequate employment opportunities. These regulations are being issued in accordance with the spirit of the 1972 Drug Abuse Act.

III. Policy:

A. Persons Currently Abusing the Use of Drugs

An applicant for any postal position who is abusing the use of drugs on a current or habitual basis shall not be considered for Postal Service employment.

B. Persons Formerly Abusing the Use of Drugs

An applicant, who has a history of abusing the use of drugs on a habitual basis, but who has not engaged in such use in the twelve (12) months immediately prior to the date of his/her suitability determination, shall be considered suitable for postal employment, unless the Postal Service finds that the applicant's employability is impaired by a lack of satisfactory rehabilitation, or that the applicant is unsuitable for reasons other than his/her past abuse of or dependence upon drugs.

(1) If the applicant has refrained from the abuse of drugs of any type or has satisfactorily participated in a federally approved methadone maintenance program for a period of twenty-four (24) months immediately prior to the date of his/her suitability determination, he/she shall be considered satisfactorily rehabilitated.

EXHIBIT 1

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(ii) If the applicant has refrained from the abuse of drugs of any type for at least twelve (12) months immediately prior to the suitability determination, or has satisfactorily participated in a federally approved methadone maintenance program for at least twelve (12) months immediately prior to the date of the suitability determination, he/she shall be considered suitable for employment upon a favorable evaluation by the Local Hiring Authority under Section IV.

(iii) If the applicant has abused the use of drugs within the twelve (12) months immediately prior to the suitability determination, he/she shall not be selected for employment by the Local Hiring Authority However, the Local Hiring Authority is encouraged to recommend to the Assistant Regional Postmaster General for Employee and Labor Relations that this twelve (12) month limitation be waived where warranted in individual cases. The said Assistant Regional Postmaster General is authorized to approve or disapprove such waivers.

(iv) No inquiry, either oral or written, shall be made, either directly or indirectly, into any applicant's history of drug abuse prior to the forty-eight (48) month period immediately preceding the date of his/her application.

IV. Determination of Applicants' Suitability for Employment

The Local Hiring Authority shall determine the suitability for employment of former drug abusers who do not meet the requirements of Section III (B)(i), and who are not excluded from consideration by Section III (A) or III (B) (iii). It is the policy of the Postal Service to evaluate the employability of every such person individually and to consider information regarding prior drug abuse only if directly relevant to the applicant's present capacity to perform as a Postal Service employee. To the extent available, such factors as the following shall be considered during such an evaluation:

(1) The applicant's age at the time he/she abused drugs.

(2) The kind(s) of drug(s) and the extent of the usage.

(3) Length of time the applicant was a drug abuser.

(4) The time elapsed since the applicant's last abuse of drugs.

(5) Evidence of efforts made by the applicant indicating his/her level of motivation to retain employment and desire to be or remain rehabilitated, including continued residence in, or contact wich, a treatment or counselling facility, or satisfactory participation in a federally approved methadone maintenance program

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(6) Evaluations as to the applicant's employability from officials of treatment programs in which the applicant is participating or has participated.

(7) Aspects of the applicant's drug treatment program relevant to rehabilitation such as, for example, the availability and adequacy of counselling and other supportive services.

(8) Opinions and recommendations of the Postal Medical Officer regarding the applicant's employability based on medical findings or factors, other than the mere fact of a past history of drug abuse or present participation in a drug abuse treatment program.

(9) The kind and location of the postal position involved.

(10) Ability to accept and discharge social responsibility during the period of rehabilitation as shown, for example, by such matters as good or poor employment record, job promotions or forced resignations, or neglect or refusal to meet just financial obligations.

V. Ascertaining Drug Abuse

A. Application Form

Pending revision of the standard application form, when a person is sent an inquiry as to availability for employment, he/she will also be asked to complete a statement as to any past abuse of drugs within the prior forty-eight (48) months (see Form PS 2791 Supplement, attached).

B. Obtaining Evaluations From Drug Abuse Treatment Programs

Under federal law, records dealing with the identity, diagnosis, prognosis, or treatment of any patient, which are maintained in connection with the performance of any drug abuse prevention function, generally may not be disclosed. Employers such as the Postal Service, which have demonstrated their willingness to employ former drug abusers, may, however, be furnished a treatment program's evaluation of an applicant's status or progress in the treatment program, with the applicant's written consent. The information which may be released by a drug abuse treatment program to the Postal Service is limited to such an evaluation, and may not include any other treatment program records.

When such information is sought concerning an applicant, the following mandatory rules apply:

1. A release must be signed by the applicant which grants permission to the Postal Service to request such information.

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2. A release in such cases may be requested only when its purpose is to obtain facts about whether the applicant has ceased to abuse drugs and whether he/she has been sufficiently rehabilitated to perform the duties of his/her prospective position. The information requested shall be used for the limited purpose of determining the applicant's suitability for postal employment.

3. All information furnished by the treatment programs must be treated as confidential and may only be disclosed to the appointing officer, the postal medical officer, and any officer whose approval of the applicant's suitability is required.

4. It may be found to be a violation of federal law to disclose or use such information in any other manner.

C. Time Limitations on Inquiries

No inquiry shall be made concerning, nor shall any reliance be placed upon, information or records relating to an applicant's abuse of drugs or treatment therefor, for any period more than forty-eight (48) months prior to the date of application.

VI. Review of Determination of Unsuitability for Employment

Any applicant found unsuitable because of current or prior drug abuse shall be notified in writing of such finding and of the factors on which it was based. In the letter of suitability determination, the applicant also shall be notified that (1) he/she has a right to review the regulations governing Postal Service employment of persons with drug abuse histories at any post office during business hours (Mon - Fri, 9-5), (2) he/she may appeal the determination to the Assistant Regional Postmaster General for Employee and Labor Relations, (3) the appeal must be filed within fifteen (15) days from the date of receipt of the letter of determination, (4) the letter of appeal must state the reasons for the appeal, and (5) he/she will have an additional fifteen (15) days to submit further reasons and/or documentation to the Assistant Regional Postmaster General in support of the appeal.

VII. Career Opportunities for Rehabilitated Employees

Rehabilitated former drug abusers who are now, or in the future may be, postal employees will not be discharged, denied transfer, assignment, or promotion to positions in the Postal Service solely on the basis of former drug abuse or on the basis of participation, past or present, in a federally approved methadone maintenance or other drug abuse treatment program. However, they are expected to meet all established requirements for such new positions and to have demonstrated their rehabilitation through on-the-job performance in the Postal Service.

Letter of Elizabeth B. DuBois dated October 23, 1974

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VIII. Applicability

These instructions do not apply to positions which are designed as "Sensitive" by the Postal Service.

IX. Announcements

Contents of these Instructions will be incorporated into Handbook P-11, "Selection Methods and Procedures". Pending publication in P-11, this policy statement and its provisions supersede any other USPS issuances which may be conflicting.

William Eudey
Assistant Postmaster General
Employee Relations Department

Manhattan Borough Office

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Letter of Elizabeth B. DuBois dated October 23, 1974

USPS PERSONAL HISTORY QUESTIONNAIRE
(Supplement to Application Form PS 2791)

Name _____

Present Address _____

Birth Date _____ Social Security No. _____

Print Answers (YES or NO) in answer boxes.

NOTE: BE TRUTHFUL IN YOUR RESPONSES TO THE FOLLOWING QUESTIONS. NEITHER HISTORY OF DRUG ABUSE NOR PRESENT PARTICIPATION IN A FEDERALLY APPROVED METHADONE MAINTENANCE PROGRAM ALONE WILL AUTOMATICALLY DISQUALIFY YOU FROM CONSIDERATION FOR POSTAL SERVICE EMPLOYMENT. HOWEVER, FAILURE TO ANSWER THIS QUESTIONNAIRE TRUTHFULLY MAY DISQUALIFY YOU.

1. Have you, within the past forty-eight (48) months, because of use of drugs, been a patient in any hospital, institution, or rehabilitation center for diagnosis or treatment, or otherwise received treatment? [_]

2. Are you now, or have you within the past forty-eight (48) months been dependent upon, or a habitual user of ANY addictive or hallucinogenic drug, including amphetamines, barbiturates, heroin, morphine, cocaine, mescaline, LSD, STP, hashish, or methadone, other than for medical treatment under the supervision of a doctor? [_]

If any questions are answered "YES", give question number and details in the space below:

Declaration:

I declare under penalty of law that the above answers are true and correct to my best knowledge and belief.

_____
(Signed)

A false or dishonest statement or answer may be grounds for not employing you or for dismissing you after you begin work, and may be punishable by fine or imprisonment. (18 U.S.C. §1001).

SJW:lq
73-1378
d-99

Letter of Elizabeth B. DuBois dated October 23, 1974

RELEASE

If any questions are answered "YES", in order to establish your employability the following Release must be signed because it may be necessary to obtain evaluations from drug abuse treatment programs in which you have participated during the past forty-eight (48) months. If this Release is not signed, your application will not be processed and you will not be considered for employment because the Postal Service will not have complete information necessary to make a decision.

Release:

I hereby authorize and request any qualified physician or counselor employed by or associated with any program of drug abuse rehabilitation treatment in which I have participated in the past or am participating at present to furnish to _____ (Postmaster or Appointing Officer) or to his representative a summary or evaluation of my progress or status in such treatment program within the past forty-eight (48) months insofar as such information is reasonably necessary to the determination by the Postal Service of my suitability for employment.

This release shall not be construed to authorize the disclosure to or use by the Postal Service of any actual records in connection with any such treatment program.

I authorize and request the disclosure to the Postal Service of the information described herein for the limited purpose of determining my suitability for employment by the Postal Service and for no other purpose.

I understand that the use of any information obtained pursuant to this authorization shall be strictly limited by the Postal Service to the purpose for which it was requested and that the Postal Service will take all steps reasonable to protect the confidentiality of any information so obtained.

I understand that this report shall be made without cost to the United States Postal Service.

A photostat of this authorization shall be as effective as the original.

Declaration:

I declare that the above Release for Drug Abuse Treatment Program Evaluation has been given freely, in order that my application for Postal Service employment may be considered.

_____
(Signed)

Letter of Elizabeth B. DuBois dated October 23, 1974

New York Post Office

Brooklyn Post Office

Long Island City Post Office

Flushing Post Office

Jamaica Post Office

Bronx Post Office

John F. Kennedy Airport Mail Facility

Staten Island Post Office

Meadows Facility, Kearny, New Jersey

Far Rockaway Post Office

New York Bulk & Foreign Mail Facility, Secaucus, New Jersey

EXHIBIT 2

Letter of Elizabeth B. DuBois dated October 23, 1974

SJW:slc
73-1878
d-99

INDIVIDUAL NOTICE

POSTAL SERVICE LETTERHEAD

Dear Sir or Madam:

Pursuant to a court order settling a recent lawsuit, the United States Postal Service has agreed to adopt a new policy authorizing the employment of former drug abusers who are now drug-free as well as those who are participating in methadone maintenance treatment programs. Such persons will now be evaluated for Postal Service employment on an individual basis.

The court order additionally provides that the Postal Service will offer reconsideration for career Postal Service employment to persons who applied for such employment in the New York City area and have been rejected since May 28, 1972 due to illicit drug abuse prior to the time of their application. Such persons are to be placed on preferential hiring lists if they meet the Postal Service's current suitability criteria.

Postal Service records indicate that you were rejected for a postal job position since the cut-off date. If you believe that your rejection was for reasons related to a drug abuse history, and you now want reconsideration for a postal job, please fill in the attached form immediately, and send it CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Michael Lardia, Director, Employee Relations Division, United States Postal Service, Northeast Region, Main Post Office Building, New York, New York 10098. It must be mailed no later than 1974, in order for you to be eligible for reconsideration under the terms of the court order. The sooner it is mailed the sooner your application will be processed and you will have an opportunity for placement on the preferential hiring lists.

If there is any disagreement between you and the Postal Service as to whether your previous rejection was in fact based on a prior history of drug abuse, the court order provides for a hearing on the matter before an impartial referee.

Except as provided in the Court order, all persons who avail themselves of the benefits of the order because of a previous denial of employment with the Postal Service shall be deemed to have waived any and all claims for relief arising out of that denial including back pay.

Copies of the court order embodying the settlement, including the provisions of the new policy authorizing the employment of former drug abusers, are available during business hours (Mon-Fri 9-5) at the Postal Service personnel offices listed below:

EXHIBIT 3

SJW:slc
73-1878
d-99

Letter of Elizabeth B. DuBois dated October 23, 1974

U.S. Postal Service
Employment Section
General Post Office
Room 330
Cadman Plaza
Brooklyn, New York 11201

U.S. Postal Service
Personnel Office
General Post Office
Annex No. 1
590 Grand Concourse
Bronx, New York 10451

U.S. Postal Service
Personnel Office
General Post Office
Room 3503
33rd Street & 8th Ave.
New York, New York 10001

U.S. Postal Service
Personnel Office
P.C.C. Station
46th Street & Northern Blvd.
Long Island City, N.Y. 11101

U.S. Postal Service
Personnel Office
41-65 Main Street
Flushing, New York 11351

U.S. Postal Service
Personnel Office, Room 224
88-40 164th Street
Jamaica, New York 11431

U.S. Postal Service
Air Mail Facility, JFK
182-30 150th Road
Springfield Gardens, N.Y.
11431

U.S. Postal Service
Personnel Office, Room 110
550 Manor Road
Staten Island, N.Y. 10314

U.S. Postal Service
850 Newark Turnpike
Kearny, New Jersey 07099

U.S. Postal Service
Personnel Office
1836 Mott Avenue
Far Rockaway, N.Y. 11691

U.S. Postal Service
Personnel Office, Room 102
80 County Road
Jersey City, New Jersey 07097

You or your representative have a right to review ~~these~~ to see if you would qualify under ~~them~~ its provisions for a job.

If you have any questions about this, please call:

Stuart Abramson, Assistant Regional Labor
Counsel for the Postal Service
(212) 264-7404

-or-

The Legal Action Center of the
City of New York, Inc.
271 Madison Avenue Suite 708
New York, New York 10016
(212) 679-6502

Attorneys for plaintiffs in
the lawsuit which resulted
in the settlement order.

Letter of Elizabeth B. DuBois dated October 23, 1974

73-1578
d-99

Ira S. Bezoza, Esq.
Williamsburg Neighborhood Legal Services
260 Broadway
Brooklyn, New York 11211
(212) 782-6175

Sincerely,

United States Postal Service

Letter of Elizabeth B. DuBois dated October 23, 1974

APPLICATION FOR RECONSIDERATION FOR POSTAL SERVICE EMPLOYMENT

If you believe you were denied Postal Service employment because of a history of prior drug abuse or because of participation in a methadone maintenance program, and you want to be reconsidered for such employment, complete this form and send it CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Michael Laraia, Director, Office of Employee Relations, United States Postal Service, Northeast Region, Main Post Office Building, New York, N. Y. 10098. This application should be mailed as soon as possible and must be mailed no later than _____ in order to receive consideration.

Name

Address (City) (State) (Zip Code)

Telephone Social Security Number

At which Post Office were you rejected for employment? _____

On what date were you notified that you were rejected? _____

State briefly what happened to make you believe you were rejected for Postal Service employment because of prior drug abuse or participation in a methadone maintenance program. Attach any available documentation related to your claim.

(Use the back of this form or attach additional sheets if more space is needed.)

EXHIBIT 3 attachment

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d-99

Letter of Elizabeth B. DuBois dated October 23, 1974

Please indicate by checking one of the boxes below whether you choose to represent yourself or to designate someone to represent you in connection with your application for reconsideration.

☐ I will represent myself.

☐ I would like _____ (Name)

_____ (Title) _____ (Address)

_____ (Telephone)

to be my representative. (This person need not be a lawyer. It may, for example, be a drug treatment program counselor.)

If you do not designate a representative at this time but wish to subsequently, please send written notification of said designation to Michael Laraia, Director, Office of Employee Relations, at the above indicated Postal Service address.

If you want further information contact:

Legal Action Center of the
City of New York, Inc.
271 Madison Avenue, Suite 708
New York, New York 10016
(212) 679-6502

Attorneys for plaintiffs in the lawsuit which resulted in the settlement order.

-or-

Ira S. Bezoza, Esq.
Williamsburg Neighborhood
Legal Services
260 Broadway
Brooklyn, New York 11211
(212) 782-6175

date
signature
Lines

Letter of Elizabeth B. DuBois dated October 23, 1974

SJW:slc
73-1878
d-99

NOTICE TO DRUG TREATMENT PROGRAMS POSTAL SERVICE LETTERHEAD

, 1974

Dear Drug Treatment Program Director

Pursuant to a court order settling a recent lawsuit, the United States Postal Service has adoped a new policy respecting the employment of former drug abusers. Under certain conditions former drug abusers, including participants in methadone maintenance programs, will now be eligible for Postal employment. Enclosed is a copy of the Regional Instructions which embody the new Postal Service policy.

As part of the settlement, the Postal Service has also agreed to reconsider for employment under the new policy those persons who applied for career employment in the New York City area and who were, subsequent to May 28, 1972, denied such employment due to their prior drug abuse histories. Such persons are to be placed on preferential hiring lists if they meet the Postal Service's current suitability criteria.

Your assistance in locating and identifying such persons would be greatly appreciated. Enclosed are three copies of a bulletin announcing the settlement that are designed for posting in your treatment center.

It is essential that you act promptly if persons eligible for reconsideration are to have their applications considered. Persons seeking reconsideration for Postal employment must mail a copy of the enclosed form entitled "Application for Reconsideration for Postal Service Employment", or a letter containing the information requested therein, to Michael Laraia, Director, Office of Employee Relations, United States Postal Service, Northeast Region, Main Post Office Building, New York, N.Y. 10098 immediately (and in no event later than ,1974). The sooner it is mailed the sooner their applications will be processed and they will have an opportunity for placement on the preferential hiring lists. The form must be sent by CERTIFIED MAIL, RETURN RECEIPT REQUESTED. (If additonal copies of the form are needed for the use of your program's participants, they may be requested from Michael Laraia at the above address, (212) 971-5438, or xeroxed from the enclosed copy.)

The form makes provision for a person to designate a representative to act on his/her behalf. This representative need not be a lawyer. He or she may, for example, be a drug treatment counselor, job placement specialist or other program official.

The court order provides that persons who avail themselves of the benefits of the order because of previous denial of employment with the Postal Service shall be deemed to have waived any and all claims for relief arising out of that denial, including back pay, except as provided in the order.

Copies of the court order embodying the settlement, including the provisions of the new policy authorizing the employment of former drug abusers, are available for inspection by persons potentially eligible for reconsideration or their representatives during business hours (Mon-Fri 9-5) at ~~all~~ the Postal Service personnel offices ~~in the New York area as~~ listed below:

EXHIBIT 4

SJW:slc
73-1878
d-99

U.S. Postal Service
Employment Section
General Post Office
Room 330
Cadman Plaza
Brooklyn, New York 11201

U.S. Postal Service
Personnel Office
General Post Office
Annex No. 1
590 Grand Concourse
Bronx, New York 10451

U.S. Postal Service
Personnel Office
General Post Office
Room 3503
33rd Street & 8th Ave.
New York, New York 10001

U.S. Postal Service
Personnel Office
P.C.C. Station
46th Street & Northern Blvd.
Long Island City, N.Y. 11101

U.S. Postal Service
Personnel Office
41-65 Main Street
Flushing, New York 11351

U.S. Postal Service
Personnel Office, Room 224
88-40 164th Street
Jamaica, New York 11431

U.S. Postal Service
Air Mail Facility, JFK
182-30 150th Road
Springfield Gardens, N.Y.
11431

U.S. Postal Service
Personnel Office, Room 110
550 Manor Road
Staten Island, N.Y. 10314

U.S. Postal Service
850 Newark Turnpike
Kearny, New Jersey 07099

U.S. Postal Service
Personnel Office
1836 Mott Avenue
Far Rockaway, N.Y. 11691

U.S. Postal Service
Personnel Office, Room 102
80 County Road
Jersey City, New Jersey 07097

Copies are also available at the offices of the attorneys for plaintiffs.

If you have questions about this please call:

Stuart Abramson, Assistant Regional Labor
Counsel for the Postal Service
(212) 264-7404

- or -

The Legal Action Center of the
City of New York, Inc.
271 Madison Avenue, Suite 708
New York, N.Y. 10016
(212) 679-6502

Attorneys for plaintiffs in
the lawsuit which resulted
in the settlement order.

Letter of Elizabeth B. DuBois dated October 23, 1974

SJW:slc
73-1878
d-99

Ira S. Bezoza, Esq.
Williamsburg Neighborhood
Legal services
260 Broadway
Brooklyn, New York 11211
(212) 782-6174

Sincerely,

United States Postal Service

Letter of Elizabeth B. Dudis dated October 23, 1974

SJW:bj
73-1878
d-99

[treatment program bulletin]

NOTICE OF SETTLEMENT OF LAWSUIT AGAINST UNITED STATES POSTAL SERVICE AND OPPORTUNITIES FOR EMPLOYMENT FOR FORMER DRUG ABUSERS

Pursuant to a court order settling a recent lawsuit, the United States Postal Service has agreed to adopt a new policy authorizing the employment of former drug abusers who are now drug-free as well as those who are participating in methadone maintenance treatment programs. Such persons will now be evaluated for Postal Service employment on an individual basis.

The court order additionally provides that the Postal Service will offer reconsideration for Postal Service career employment to persons who applied for such employment in the New York City area and have been rejected since May 23, 1972 due to their illicit drug abuse prior to the time of their application. Such persons are to be placed on preferential hiring lists if they meet the Postal Service's current suitability criteria.

Any person believing that he or she is entitled to and wants reconsideration for career Postal Service employment under the terms of this settlement should immediately contact his or her drug treatment program director or counselor. Special application forms, together with further information regarding applicants' rights under the terms of the settlement, are available on request from Michael Laraia, Director, Office of Employee Relations, United States Postal Service, Northeast Region, Main Post Office Building, New York 10098, (212) 971-5438.

EXHIBIT 4 (enclosure)

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73-1878
d-99

Letter of Elizabeth I. DuBois dated October 23, 1974

EXHIBIT 4 enclosures should include:

1. Regional Instructions (EXHIBIT 1)

2. Application for Reconsideration for Postal Service Employment (EXHIBIT 3 attachment)

3. Treatment Program Bullentin (attached) (3 copies)

Letter of Elizabeth B. DuBois dated October 23, 1974

SJW:bj
73-1378
d-99

MAILING LIST OF DRUG TREATMENT PROGRAMS

Adolescent Development Program
411 East 69th Street
New York, New York 10021
Dir. Robert Millman, M.D.

Bellevue Hospital Center
1st Avenue & 27th Street
New York, New York 10016
Dir. Bernard Salzman, M.D.

Beth Israel Medical Center
Morris J. Berstein Institute
Methadone Maintenance Treatment Program &
Drug Addiction Service
307 Second Avenue
New York, New York 10003
Dir. Harvey Gollano, M.D.

Criteria Center, Inc.
22 West 12th Street
New York, New York 10011
Dir. Carl Carter

Director
Beth Israel Methadone Maintenance
Treatment Program
1st Avenue & 26th Street
New York, New York

Director
Bernstein Institute Methadone Maintenance
Treatment Program
251 East 17th Street
New York, New York

Director
Bernstein Institute Methadone Maintenance
Treatment Program
319 East 6th Street #1 & #2
New York, New York

Director
Bernstein Institute Methadone Maintenance
Treatment Program
341 East 25th Street
New York, New York

Director
Bernstein Institute Methadone Maintenance
Treatment Program
29 West 15th Street #1 & #2
New York, New York

Director
Bernstein Institute Methadone Maintenance
Treatment Program
273 First Avenue
New York, New York

EXHIBIT 5

only of
Exhibit 5 included

SJW:mrc
73-1878
d-99

Letter of Elizabeth B. DuBois dated October 23, 1974

Director
Court Employment Project, Inc.
Manhattan Borough Office
346 Broadway
New York, New York 10013

Director
Court Employment Project, Inc.
Brooklyn Borough Office
186 Remsen St.
Brooklyn, New York 11201

Director
Court Employment Project, Inc.
Bronx Brough Office
501 E. 161st St.
Bronx, N.Y.

James Houghton, Director
Fight Back
1 East 125th Street
New York, New York 10035

Eleanor Holmes Norton, Chairperson
New York City Human Rights Commission
80 Lafayette Street
New York, New York 10013

Hugh Ward
PACT, Inc.
415 Madison Avenue
New York, New York 10017

Project SHARE
c/o Hudson Guild
441 West 26th Street
New York, New York 10001

Letter of Elizabeth B. DuBois dated October 23, 1974

SJW:sr
d-99

NOTICE OF SETTLEMENT OF LAWSUIT AGAINST
UNITED STATES POSTAL SERVICE AND OPPORTUNITIES
FOR EMPLOYMENT FOR FORMER DRUG ABUSERS

Pursuant to a court order settling a recent lawsuit, the United States Postal Service has agreed to adopt a new policy authorizing the employment of former drug abusers who are now drug-free as well as those who are participating in methadone maintenance treatment programs. Such persons will now be evaluated for Postal Service employment on an individual basis.

The court order additionally provides that the Postal Service will offer reconsideration for Postal Service employment to persons who applied for such employment in the New York City area and have been rejected since May 28, 1972 due to ~~their prior~~ drug abuse. Such persons are to be placed on preferential hiring lists if they meet the Postal Service's current suitability criteria.

If you applied for career Postal Service employment in the New York City area and were rejected subsequent to May 28, 1972, and if you believe that your rejection was for reasons related to a drug abuse history, and you now want reconsideration for a postal job, please fill in the attached form immediately, and send it CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Michael Laraia, Director, Office of Employee Relations, United States Postal Service, Northeast Region, Main Post Office Building, New York, N.Y. 10098. It must be mailed no later than , 1974, in order for you to be eligible for reconsideration under the terms of the court order. The sooner it is mailed the sooner your application will be processed and you will have an opportunity for placement on the preferential hiring lists.

If there is any disagreement between you and the Postal Service as to whether your previous rejection was in fact based on a prior history of drug abuse, the court order provides for an impartial hearing on the matter.

The court order provides that persons who avail themselves of the benefits of the order because of a previous denial of employment with the Postal Service shall be deemed to have waived any and all claims for relief arising out of that denial, including back pay, except as provided in the order.

Copies of the court order embodying the settlement, including the provisions of the new policy authorizing the employment of former drug abusers, are available at ~~all~~ the Postal Service personnel offices listed below during business hours (Mon-Fri 9-5):

U.S. Postal Service
Employment Section
General Post Office
Room 330
Cadman Plaza
Brooklyn, New York 11201

U.S. Postal Service
Personnel Office
General Post Office
Annex No. 1
590 Grand Concourse
Bronx, New York 10451

U.S. Postal Service
Personnel Office
General Post Office
Room 3503
33rd Street & 8th Ave.
New York, New York 10001

U.S. Postal Service
Personnel Office
P.C.C. Station
46th Street & Northern Blvd.
Long Island City, N.Y. 11101

EXHIBIT 6

check out because they are working

SJW:lq
d-99

Letter of Elizabeth B. DuBois dated October 23, 1974

U.S. Postal Service
Personnel Office
41-65 Main Street
Flushing, New York 11351

U.S. Postal Service
Personnel Office, Room 224
88-40 164th Street
Jamaica, New York 11431

U.S. Postal Service
Air Mail Facility, JFK
182-30 150th Road
Springfield Gardens, N.Y.
11431

U.S. Postal Service
Personnel Office, Room 110
550 Manor Road
Staten Island, N.Y. 10314

U.S. Postal Service
850 Neward Turnpike
Kearny, New Jersey 07099

U.S. Postal Service
Personnel Office
1836 Mott Avenue
Far Rockaway, N.Y. 11691

U.S. Postal Service
Personnel Office, Room 102
80 County Road
Jersey City, New Jersey 07097

the settlement order of November 26

You or your representative have a right to review these to see if you would qualify under ~~them~~ its provisions for a job.

If you have any questions about this, please call:

Stuart Abramson, Assistant Regional
Labor Counsel for the Postal Service
(212) 264-7404

-or-

The Legal Action Center of the
City of New York, Inc.
271 Madison Avenue, Suite 708
New York, New York 10016
(212) 679-6502

Attorneys for plaintiffs in
the lawsuit which resulted
in the settlement order.

Ira S. Bezoza, Esq.
Williamsburg Neighborhood Legal Services
260 Broadway
Brooklyn, New York 11211
(212) 782-6175

Sincerely,

United States Postal Service

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

CARL A. BEAZER, et al.,

Plaintiffs, : 72 Civ. 5307

v. :

NEW YORK CITY TRANSIT AUTHORITY, :

Defendant. :

----------x

BEFORE: HON. THOMAS P. GRIESA,

District Judge.

New York, New York
November 27, 1974 - 2:30 p.m.

PRESENT:

ERIC D. BALBER, Esq.,
ELIZABETH B. DU BOIS, Esq.,
Attorneys for Plaintiff.

JOHN G. DE ROOS, Esq.,
Attorney for Transit Authority,
By: GILBERT T. DUNN, Esq.,
of Counsel.

A. MICHAEL WEBER, Esq.,
Assistant Corporation Counsel,
Attorney for Civil Service Commission.

(Case called)

THE COURT: We will make this short, but I think something should be put on the record. My clerks will be down in a minute.

What we have made up is a memorandum or really basically an outline of the tour based upon our notes and let me be more specific.

The record should show that counsel for the parties, at least counsel for the plaintiff and counsel for the Transit Authority and myself and my two law clerks toured various Transit Authority facilities on -- what was the date?

MISS DuBOIS: The 13th, I believe.

THE COURT: -- on November 13th. Both of my clerks took notes during the entire time. Those notes I would like marked as Court's exhibits and they can be inspected, of course, by anybody.

On the basis of those notes my two clerks have gotten up a memorandum which I would like marked and introduced into evidence.

Now, that is, of course, subject to any corrections or any additions that any party wants to make, but it is a start, and I think it is accurate as far as it goes, but it is, of course, subject to correction and

supplement.

We also took some photographs, some of the photographs I think should be introduced in evidence.

Court's Exhibit A will be the memorandum of my two law clerks, Jonathan Mark and Kathleen March, based on their notes taken during the tour of the Transit Authority November 13, 1974. That will be Court's Exhibit A.

(Court's Exhibit A was marked.)

THE COURT: We have got copies. I don't have the notes themselves, but they can be marked subsequently.

Now, the photographs, a number of photographs were taken, some of them I think should be introduced into evidence because they do show facilities and jobs. Others are just of the people involved, which are just maybe of interest for the pleasure of it. Anybody who wants to look at those or get copies, they can, but I do want to get -- my law clerk has laid out money for film and for the prints, and I do want to get reimbursed because this is evidence in the case, and I want to get reimbursed for the costs of the photographs to be introduced into evidence.

There are twelve of these photographs and we will put them in an envelope and consider that they

are Court's Exhibit B.

(Court's Exhibit B was marked.)

THE COURT: The cost of the film and the development for those twelve photographs, which are being introduced in evidence, is $4.83, and I would hope that you can manage to reimburse Mr. Mark very promptly. If you want to look at these other photographs of our shining faces, if you want to look at those, why, see Mr. Mark.

MR. DUNN: Your Honor, were you addressing me when you said to reimburse Mr. Mark?

THE COURT: I think it should be split or whatever you want to do, but I just want him --

MR. DUNN: Whatever is the Court's pleasure.

THE COURT: Could one of you give him some money now and then divide it up? I think it should be split among the three parties. It is not a tremendous amount. Just take care of that, will you, please?

I want to make it clear, in that memo, if there are any things that need correction or supplementing, please do what you feel is necessary.

Furthermore, that memo is listing very good the names of all the people that we saw during that tour and if anybody feels that the testimony of any of those people

5 eomch 5

is necessary, then again that is an option which is open to the parties. In other words, if we want to do anything more to fill out the information about that tour or anything related to it, why, it is up to the parties.

Beazer ct Pap HB #84 Court's Memo of TA Tour 11/13/74

Memorandum of the Court Relating to Tour of Transit Authority Facilities Held November 13, 1974

TRANSIT AUTHORITY TOUR

November 13, 1974

BEAZER v. NEW YORK CITY TRANSIT AUTHORITY

(72 Civ. 5307)

3:00 P.M. - Tour group assembles in Transit Authority Command Center at 370 Jay Street after a short conference involving Judge Griesa, Mr. DeRoos and Ms. DuBois. The entire group met and was introduced in the Transit Authority law library.

Mr. McLaughlin is the leader.

I. Office Work at Jay Street (370 Jay Street)

A. Office for Operations and Maintenance.

Executive Officer - Mr. Berry
Mr. J. Minogue briefs us.

This office records and analyzes the On Time Performance of trains. It keeps lists of late and on-time trains and records the statistics of the R/R's operations -- e.g., the percentage of on-time trains in a given period.

Job titles:

(1) Dispatchers
(2) Trainmasters
(3) Analysts
(4) Supervisors

work in this office. The office is operated on a 24-hour basis and constitutes an "operations" group.

Personnel connected with the office also go out into the field and survey R/R operations.

B. Clerical Office

Looked into typical clerical, i.e., "non operations" group office, particular office handled routine correspondence.

Job titles: city wide clerical titles, plus supervisory personnel.

Generally: 370 Jay Street is the main TA building. It houses the only business office connected with the TA. 2500 employees work in this building; most of them work 9-5.

In addition to the Jay Street building, there is a large office at 53rd Street; various small offices in substations, and clerical and engineering staff at the various shops.

C. Command Center

Anthony Stefanack - Superintendent in charge.

The Center maintains radio communications with its trains, other R/Rs and the news media.

80 people work in the Command Center. Each of the 3 divisions has a 7-man team plus 3 radio dispatchers, 2 assistant dispatchers.

Job titles in Command Center are:

(1) Trainmasters
(2) Console Dispatchers
(3) Asst. train dispatchers
(4) Analysts
(5) Supervisors

Personnel in the Command Center need a minimum of 1 year experience in the field. Most presently working there have 10-15 years experience as dispatchers.

If a train is in trouble the Command Center is notified by radio and they communicate with the motorman and work out a solution. (Motorman notifies passengers by train PA system but 1,000 cars don't have PA system).

A master board will show train movement to Command Center personnel when the board is fully installed -- only one section of the display is currently operational.

II. Boro Hall Station

Briefed by Station Master, John Rockfield, on duties of Station personnel.

Job titles:

(1) Railroad Clerk

Works on one of three 8-hour shifts, e.g., 7 A.M.-3 P.M., 3 P.M.-11 P.M., 11 P.M.-7 A.M.

Duties:

Sale of tokens
Travel information
Collect money
Note: the Clerk is solely responsible for the money that comes in to the Station in that he/she collects the money and counts it. However, the money is recounted at Jay Street, after it is picked up by collecting agents who put it in sealed bags. The Clerk may be the only employee in the station between rounds of police and porters, etc.
Railroad Clerk is a bonded employee.
1 Clerk per station is the rule, 2 in busy stations.

**

(2) Transit Police

2 or 3 transit police work either at fixed posts or roving posts. There are few of the former positions. Most police work on roving duty. Sometimes, e.g. at rush hour, police direct traffic (pedestrian) in the tunnels.

(3) Platform Conductor

When they are assigned it is usually for a 2-3 hour period during rush hour.

** Report accidents or other emergencies, and render assistance if necessary.

(4) Station Porter

Cleans station area. Generally assigned to 2, sometimes 3, stations. Station porters work an 8-hour shift, e.g. 8 A.M.-4 P.M., some 8 P.M.-4 A.M.

In addition to cleaning station, Porter can substitute for the Railroad Clerk if permission is obtained from Jay Street for the substitution. Station Porters are bonded employees.

(5) Other Station Personnel

Other station personnel include special cleaning crews -- also titled as "Railroad Porters." They do heavy cleaning in the station such as hosing down stations, cleaning tile.

III. Clark Street Tunnel

Drainage and pump room, located between tracks, underneath the East River. Pumps are automatic, but employees must come here to maintain the pumps. There was a serious fire at this particular pump room last year, causing adverse publicity. Room may be reached by having train make special stop, or by walking along a catwalk for about 12 feet.

IV. Marcy Avenue Switching Tower

Narrator: P. Roche, trainmaster

Job titles:

(1) Towerman

Runs the tower. Duties: Operation of signals to traffic on either side of the Williamsburg Bridge. Operation of switches that set train routes.
Note: The only error possible is switching trains to the wrong track -- putting express trains on local track and local on express track. The nature of the switching machine prevents setting up head-on collisions of trains. 2 shifts at this tower 6 A.M.-2 P.M., 2 P.M.-10 P.M. Busy towers have 3 shifts.

The towerman sets switches according to a schedule. He signals motormen regarding the route set up.

Green = Main route
Yellow = Diverging route
Red = Wrong route

If a motorman sees red he calls Command Center to verify the change. Command Center tells him whether to accept the route or wait for a change.

Other Workers Assigned to Each Tower

(2) Signal Maintainer
(3) Signal Maintainer's Helper

Overcome malfunctions in the system under their supervision. Their job is to get out on roadbed and maintain and repair switches, signal lights, etc., including manual operation of said signals in case of malfunction. They check the section every day and overhaul all switching and signalling equipment every 30 days.

No signal man on night shift.

Depart Tower 5:15 P.M.

V. Marcy Avenue Breaker House

Circuit breakers in the 600 volt system are maintained here by a Power distribution maintainer. No operator is necessary, as breaker houses are all automated.

VI. Bus Terminal - East New York Bus Depot

Mr. Ferrow briefs group.

A. Downstairs:
Job titles, downstairs in depot:

(1) Bus operators (drivers)
(2) Yard Dispatcher
Assigns routes to drivers.
(3) Bus maintainer B (mechanic)
(4) Bus maintainer A (body work)
(5) Bus maintainer's helper B

(6) Bus maintainer's helper A
(7) Car cleaner
(8) Foreman

After 7 o'clock buses come in
(1) All buses get (at least once a day)
Fuel
Money removed by Keene Machine
(machine sucks money out)
Outside washed by machine -- (if bus is very dirty men clean it manually)
Inside cleaned by car cleaners, 5 at night, 2 in the daytime. Car cleaning done at night so when the "hawks" (people who go out at 12 midnight or 1 A.M.) go out they go out clean.

(2) Maintenance

(a) Deferred maintenance

(b) Inspection.
Sometimes buses are steamed and washed so mechanical troubles covered by dirt will be uncovered and spotted -- 1 man operates the steaming machine.

[James Rogers 4:30 P.M.- 12:30 A.M. shift]

(c) One foreman supervises the workmen who are divided as follows:

(i) Bus maintainer B's - Bus maintainer B= mechanics

(ii) Bus maintainer A's - Body and fender repairmen

(iii) Maintainer Helper B's - mechanics' helpers

(iv) Car Cleaners

(d) The bus is inspected. Troubles are noted and the foreman assigns work to the "pick-up" men -- mechanics who actually do the work.

(e) There are 2 shifts in the dept.
30 employees in the day
40 at night.

(f) This garage has no road crew.. Other garages tow in this depot's buses.

B. Third Floor East New York Bus Depot.

Mr. Bernstein guide.

Command Center for Surface Transit for the entire city. There are 11 TA depots through the city and each one has a dispatcher here. Also 10 MABSTOA. Anyone with car radio calls in here for assistance.

Job titles:

All personnel here are dispatchers.

C. Second Floor East New York Bus Depot.

The Shop. Main shop has a few hundred workers.

Foreman Mr. Gallagher

(1) Oversees 150 people during the day. These people are Bus maintainers B. In addition to the 150 there are 7 foremen.

(2) Plus 90 Bus maintainers A do body reconstruction in this shop.

D. General information: re towers - Utica Avenue

In station saw dispatchers office. Tower was 350 feet out of station.

90% of towers are not in the stations on the BMT line; most are well outside the stations. On the other lines, many towers are in or very near stations.

Towerman must ask permission to walk from station to tower.

Visit to Utica Avenue is to illustrate access difficulties. We observe without going to the tower. The machine in the tower is like the one at Marcy Avenue -- maybe a newer version, though.

Plaintiff Carl Beazer points out and Defendants confirm that tower employees are often dropped at tower by trains, though theoretically rule is only those carrying equipment may be dropped off.

VII. Coney Island Yard

800 car capacity, 200 acres.

Job titles include:

(1) Motormen,

(2) Car cleaners

Cars here for inspection, storage and cleaning. Exterior car cleaners work 10 A.M. - 3 P.M.

A. Car wash area

Automated, mid-yard. 300 cars washed/day.
Visit here shows access problems.
Crossing tracks and 3rd rails is the hazard.
3rd rail is always covered on this R/R.
Personnel working at the car wash report to the shop and then come here. Car wash is a day only operation - thus tracking crossing is in daylight

Interior car cleaning is a night shift. 10 P.M. - 6 A.M. It seemed to be done near the main building.

B. General information re car cleaning by Bill Hamilton, superintendent of car cleaners.

(1) 900 car cleaners in whole system.
(a) 75% work 10 P.M. - 6 A.M. shift.
(b) 40% clean inside of trains. To do so they must cross tracks.
(c) Lay-up areas -- some express trains lay-up in middle of tracks and must be cleaned there.

[Men work alone or in pairs according to job]
[Helpers work alone]

(2) Other special cleaning jobs

Compressed air blow outs prior to inspection. 50-60% of car cleaners work in shop doing this. These men work alone.

(3) Supervision of cleaners.

Men report to the Barn but they go to work alone. They must check out at the Barn - or call in if they don't come back to

check out because they are working at an outlying location.

(4) Foreman -- there is one for approximately every 20 men.

C. General information re Mechanics.

(1) 4,000 mechanics work for the whole subway, mostly day work.

(a) 2,200-2,400 work in 2 main shops where heavy work is done. Rest are scattered. Most work days.

(2) Two inspection divisions employ mechanics.

Coney Island Yard.

207th Street Yard in Manhattan -- the latter is a large yard but not a major inspection point.

D. Other workers in yard include motormen.

They move trains in the yard
Remake trains
Move trains into passenger service

E. Signal maintainer Moreno shows us the yard signal room. The room is full of electronic equipment some of which controls the safety system installed on the tracks -- automatic braking mechanism, for example.

F. Also saw large circuit breaker house for yard.

G. Motorman, Bryan McLean demonstrated operation of train as follows: observe signal lights, train cannot move until red signal changes, since if it passes red signal a tripping device on track will activate train brakes causing automatic emergency stop. Motorman is to regulate speed according to signals plus T.A. rules. Violation can activate automatic braking device. Emergency stop can injure passengers. The motorman cannot control which route he is

switched onto, though he can stop and radio to confirm route is correct, etc. Key turns on power, basic operation is by combined throttle - brake lever. This lever has a deadman's feature - i.e., it must be depressed to operate the train, any let up in the pressure and the train stops automatically. McLean works only in the yard, this is a "seniority job" -- i.e., a sought-after position that only a worker with great seniority can get.

Conductor's duties were also explained. The conductor rides in middle car of train of over 4-car length, and in end car of 4-car train. This job is to watch passengers out the window of the train when it stops at station, and control the opening and closing of train doors. He communicates with the motorman by intercom, in newer cars, & also announces stations, delays to passengers. In all cars, the motorman cannot move the train until a light on the instrument panel (wired to the door circuitry) lights, signifying all doors are closed. To operate the doors, he pushes a button on the side of the train he wants to open the doors on. It is possible to open the doors on the wrong side, and McLean said this has happened.

VIII. Coney Island Yard Control Tower.

A. Tower control sets routes as per schedule. Sets switches. If job is done incorrectly cars bunch up.

B. Lay-ups are not scheduled in advance as are routes. Lay-up schedules are made up by the terminal operator every day.

C. Training for yard towerman

(1) 2 weeks of schooling in which towermen learn symbols used on the display board

(2) 50 day on the job break in period.

(3) Interview with Towerman Tom Westermier. Been with T.A. for 7 years. A tower man for 6 years; 4 years at yard tower.

Started as R/R clerk and took promotional exam for towerman.

D. Yard-masters

also occupy this tower. Their board allows 1 button set-up of a multiple switch route.

IX. Coney Island Inspection Shop

A.C. Herrington, Superintendent of Maintenance Coney Island Shop is guide. [Bill Hamilton supervises Herrington]

A. Here inspectors check the electrical systems in the train from pits below the cars. We watch inspectors replacing electrical switches that the motorman controls in moving the train.

200 CMA's work here in 3 shifts.

B. Sweep outs

Cars are swept out every day. We pass such a sweep out in progress.

After an inspection cars get a full cleaning -- graffiti removed, paint is touched up, floors are mopped. -- This occurs every six weeks. We observe several newly cleaned cars.

Car cleaners can take exams for promotion to other jobs, such as booth attendant, station worker, etc.

X. Coney Island Main Shop 10:15 P.M.

Cars that can't be inspected in the barns are overhauled here. This is where heavy work is done, using large overhead cranes and heavy power machinery. Most people in this shop work in the day. There are:

60 CMB's (mechanics)
350 CME's (electricians)
200 CMA's (body workers)
45 CMC's (mechanics)
75 CMF's (truck maintainers)

A. Drop table area.

Operates 24 hours a day. Old trucks (wheel assemblies) are removed from car bodies; new ones are installed.

B. Truck repair area.

Trucks are received here from the truck drop area for partial or full rebuilding.

There are a few men on the midnight shift in the truck shop. More men work the midnight shift in the wheel and axel area.

C. Sheet metal shop -- day only.

D. Electrical repair shop -- day only.

E. Body and heavy electrical work is done by CMA's at the main shop.

F. One side of the shop is for long-term jobs (1 to 3 weeks). We see car bodies on horses; slated for rewiring, etc.

Other side of the shop does short term work.

TOUR ENDS 10:53 P.M.

J. Mark
11/14/74 from 11/13/74 tour note

K. March
11/15/74 from 11/13/74 tour note

Transcript of Proceedings November 27, 1974
(re Receipt of Additional Testimony)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

CARL A. BEAZER, et al.,

Plaintiffs, : 72 Civ. 5307

v. :

NEW YORK CITY TRANSIT AUTHORITY, :

Defendant. :

----------x

BEFORE: HON. THOMAS P. GRIESA,

District Judge.

New York, New York
November 27, 1974 - 2:30 p.m.

PRESENT:

ERIC D. BALBER, Esq.,
ELIZABETH B. DU BOIS, Esq.,
Attorneys for Plaintiff.

JOHN G. DE ROOS, Esq.,
Attorney for Transit Authority,
By: GILBERT T. DUNN, Esq.,
of Counsel.

A. MICHAEL WEBER, Esq.,
Assistant Corporation Counsel,
Attorney for Civil Service Commission.

* * *

I am still bothered to some extent by the problem that I raised right at the beginning of the trial, and that is I am not satisfied that the Transit Authority has done its homework in working out its policies.

I was told by one or two of your witnesses, Mr. McLaren perhaps, and maybe the doctor, what was his name --

MR. DUNN: Dr. Lynch.

THE COURT: No.

MR. DUNN: Dr. Lanzetta.

THE COURT: I was told by Mr. McLaren or Dr. Lanzetta or both that there is now being initiated a kind of a reconsideration and that the first step occurred sometime recently when the Transit Authority felt it had occasion to re-examine what it's policy was on bus drivers and the question came up in this form:

Will we maintain a blanket exclusion of past and

eoe

present narcotic, including methadone people for the office of bus driver. That was reconsidered and the answer that they came up with is yes, we will maintain our blanket exclusion.

You recall that testimony?

MR. DUNN: I do recall that, yes, your Honor.

THE COURT: All right, now, it wasn't very clear to me when this re-examination was going to be pursued for any other positions and I kind of got the idea that it was uncertain when such a re-examination would be triggered and it might be triggered only when somebody would be applying. Suppose a methadone patient came in and applied for a position as mechanic; then you might be willing to consider whether to keep on with your blanket exclusion of that mechanical job.

I don't think that is a very satisfactory state of affairs. Apparently, the Transit Authority has decided that it is worth some reconsideration, but you are going about it in a way that you might consider one category this year, another category six years from now or never.

I don't understand, if you feel that this problem is of any importance to you, I do not understand why you are not at work re-examining the situation as to all categories of employment.

Now, if you are trying to pass the buck to me, you will end up doing it maybe, but I don't think that is a very satisfactory thing. You are the employer. You should do the job. And it's not satisfactory to me to be worrying about these questions when the Transit

2 eomch

Authority has not done it, and nothing I have heard has indicated to me that there has been any comprehensive examination of the ability of a past drug addict or a present methadone patient to perform Transit Authority jobs, and I mean a comprehensive look at the jobs from top to bottom or side to side, or whatever way you want to say it.

I heard the testimony of Mr. McLaren, the emphasis was on the risky jobs. He didn't tell me about any reasons why people in clerical positions or really in cleaning and dusting positions -- there were lots of jobs that really weren't covered by anything that has been told to me so far as to any rational reason why methadone people can't be employed.

I don't think the Transit Authority has even thought about it.

We did have a session one day and we talked about some kind of a settlement and the way it was left was that maybe after the proof had progressed to a certain point and everybody had gotten educated a little bit, maybe something could be considered. I think you ought to think about it, and I think you ought to at least, and I guess you will, but you had better be prepared on this for the 12th. You have got to face the problem of

whether, even if your policy is valid with respect to the people like motormen and, you know, that class of people, even if it valid, the question still remains is it overly broad? If it is overly broad, it is unconstitutional, I guess.

That is what I really don't think we have heard anything about so far. We have had everlastingly the emphasis is on the people who have to crawl over third rails and handle trains hurtling through the tunnels, and so forth, and your case is very persuasive on those people, but that isn't the only other people who are employed by the Transit Authority who don't take trains that are hurtling.

I don't understand why you can't get busy and figure out and carry out this review. Why does it just have to wait?

MR. DUNN: I think, your Honor, that as Mr. McLaren testified and as he will, I am sure, reiterate on the 12th, that there has been a re-examination of the Authority's policy.

THE COURT: He told me on one category of bus driver.

MR. DUNN: That may be what he said and I hope I am not misrepresenting what the policy is. Mr. McLaren

is the one that would testify as to that, but I think it is pretty much an across-the-board reQexamination and --

THE COURT: I would really like to see some testmony about that. I don't think I have heard anything.

MR. DUNN: It is aimed particularly, your Honor, at the former drug addict, not the addict that is being maintained on methadone.

We have not considered employing persons on the methadone programs.

THE COURT: Mr. Dunn, most of this case relates to the people now on methadone. There has been very, very little evidence about the characteristics of epople who claim to be former heroin addicts who are completely off heroin. You know, as an original proposition, I would think they would have the strongest bet, but the evidence -- very little evidence has dealt with them, and to the extent it has, even the methadone clinic pople get on the stand and say that their people are a lot better than the people who claim they are off of it, so the people who you would sort of, in the first instance, assume are the best off, have been relegated to the position of being a higher-risk group than the

methadone people.

Most of this case has been on the present methadone people, 36,000 of them in this City and they need jobs. Now, if you tell me that the Transit Authority really hasn't given any consideration to that question, then that leaves me -- that to me is a very serious gap.

MR. DUNN: I would say this, your Honor: the question has been considered and the Transit Authority has not changed its position with respect to the methadone patients, the position being that the methadone patients present an additional ris, an additional burden to an employer and that there is no Constitutional basis --

THE COURT: Mr. Dunn, I know the position, but I am saying to you that when your witnesses come back next Thursday, if nobody else asks them, I will ask them in a lot more detail, and I don't care how many hours we go through. We can resume -- It isn't a one afternoon or a couple of hours' shot. We are going to pursue these people and I am going to find out exactly what they have done to formulate and reconsider their policies on all the people involved here.

Mr. McLaren was on the stand before and I very much appreciate him coming in on short notice, but ths was just an introduction, and I want this gone into much

more thoroughly and I don't care how many hours it takes, because I feel that we not only have to get the facts out about the employment requirements, but I want to know what the Transit Authority has or has not done inside itself to rationally formulate a review of its polices on the methadone patients and see what they have done on the different categories of employment and so forth.

I think the answer is already in the record. You really haven't done much of anything.

MR. DUNN: Your Honor, I will have Mr. McLaren here on the 12th and I will be very pleased to have any other persons suggested by Mr. McLaren, or persons I think might be appropriate to answer the Court's questions in that regard. If Mr. McLaren's answers are not as complete as the Court requires, I will have other persons here present.

THE COURT: One [illegible] thing I would like you to consider is this: I am not at all satisfied that I have a complete picture about methadone or about methadone clinics. What I am afraid of is that this is one of these things on which opinions, expert opinions, medical results can shift.

I have gotten a great deal of evidence about the Beth Israel and similar programs. I asked for more evidence about the methadone patient programs, and the answer to that was the last witness, the lady who works for the monitoring agencies, and she has a certain amount of knowledge, but really not very much. I don't feel like I know anything at all about methadone programs outside of this highly selective Beth Israel type program, and I am surprised that the Transit Authority introduced as its only witness about methadone this Dr. Lynch. There is nothing wrong with Dr. Lynch, but there is, I am sure, a lot more to the

story.

What I am really saying is that if this were a case about who owned a diamond ring, then let the litigant -- the adversary process would take over, and if the plaintiffs put on the best proof -- the Court doesn't have to worry about whether enough evidence is brought in. Let the parties put on what they want and leave it at that. But this isn't a case about who owns a diamond ring; this is a case that I fell -- and I don't want to exaggerate its importance, but I think this is a case of, really, extreme public interest, and I am concerned about the questions raised by the plaintiffs, because that is a very serious social and Constitutional problem, of how to deal with this large group of people who are trying to rehabilitate themselves from drug addiction. They have raised a very seious problem.

At the same time, I am very concerned about the Transit Authority's position, because it has the problem of what standards to set so it protects the safety of the people, the customers, and operates efficiently.

Both sides raise questions which are really very important to the public interest.

I want to get my questions answered and I fell that if the parties themselves do not put on adequate

proof, I am going to take steps to get it, and I don't think I have gotten the whole story on methadone, I don't think I have gotten the whole story on methadone clinics, and I feel, Mr. Dunn, frankly, and I think you and your side have just, you know -- I am not voicing any criticism about how you handled the case, because you just did splendidly, but I think that maybe you have -- all I can say is that I think there is more to be told, and I want to get a mass of proof on the plaintiff's side.

There are very sincere people coming in who are associated with methadone programs and it stands to reason, it seems to me, that I have to be concerned about whether that is a balanced view.

Dr. Lynch came in and Dr. Lynch is a kind of a theoretical fellow, and I think you had better consider, and if you don't, I will call the witnesses on my own, whether there is more to be done to create a balanced view of the methadone picture, the effectiveness of these clinics and the good and bad aspects of methadone clinics.

I have a feeling that right now there are people who are attempting in the best faith in the world to use methadone to help these drug addicts and, really, they don't know anyplace else to turn, so they turn to methadone.

At the same time, people are beginning to worry about methadone. Maybe that began some time ago, but they will, and this happens in any situation like this, people will begin to worry and five years from now the view of experts on methadone could be completely different from what it is right now.

I don't want to write a Constitutional decision about methadone and have it end up as a thing that is a kind of variable, that someone has a Constitutional right today and five years from now the medical opinion is all different and they don't have the Constitutional right. That is not dealing in a sensible realm of Constitutionality. I want very much to have the whole story on the good and bad points of methadone, and right in the record at the present time I wonder why certain witnesses are not called.

There is this Dr. Tritt, there are experts mentioned in the record who have not shown up in court, and why haven't they? I am not going to write a decision until I feel I have gotten reasonably close to that.

317a

Order of the Court Filed January 2, 1975 Directing Certain Experts to Appear and Testify at Trial

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -X

CARL A. BEAZER, et al.,

Plaintiffs,

- against -

NEW YORK CITY TRANSIT AUTHORITY, et al.,

Defendants.

72 Civ. 5307 (T.P.G.)

ORDER

- -X

WHEREAS, the Court has determined that further evidence with respect to defendants' case in this action is necessary and

WHEREAS, the Court has rejected defendants' offer of written articles in place of such evidence and whereas the authors of certain of these articles are within the subpeona power of the Court and

WHEREAS, certain persons consulted by the Transit Authority defendants with respect to the Transit Authority's policy concerning the employment of former drug abusers, are also within the subpeona power of the Court,

The Court has determined that the following persons should be directed to appear and testify at the trial of this action at the following times:

Dr. Vincent J. Dole	Jan. 7, 1975 at 2:00 P.M.
Dr. Amitai Etzioni	Jan. 7, 1975 at 3:30 P.M.
Dr. Harvey Gollance	Jan. 9, 1975 at 10:00 A.M.
Dr. Mary Jeanne Kreek	Jan. 9, 1975 at 11:30 A.M.
Dr. Irving Lukoff	Jan. 9, 1975 at 2:00 P.M.
Dr. Harold Trigg	Jan. 9, 1975 at 3:30 P.M.

It is so ordered.

/s/ Thomas P. Gri[illegible]
U.S.D.J.

Dated: New York, New York
December 30, 1974

318a

Plaintiffs' Memorandum Relating to the Federal Regulation of the Confidentiality of Methadone Treatment Records dated February 21, 1975

Beazer Briefs #B

001-02 #29

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

CARL A. BEAZER, et al.,

Plaintiffs,

-against-

72 Civ. 5307

(T.P.G.)

NEW YORK CITY TRANSIT AUTHORITY, et al.,

Defendants.

----------x

PLAINTIFFS' MEMORANDUM RELATING TO FEDERAL REGULATION OF THE CONFIDENTIALITY OF METHADONE MAINTENANCE TREATMENT PROGRAM RECORDS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

CARL A. BEAZER, et al.,

Plaintiffs,

72 Civ. 5307
(T.P.G.)

-against-

NEW YORK CITY TRANSIT AUTHORITY, et al.,

Defendants.

----------x

PLAINTIFFS' MEMORANDUM RELATING TO FEDERAL REGULATION OF THE CONFIDENTIALITY OF METHADONE MAINTENANCE TREATMENT PROGRAM RECORDS

Introduction

This memorandum is submitted in response to the Court's request for an explication of federal law governing the confidentiality of information contained in methadone maintenance treatment program records. Examination of the relevant statute, implementing regulations, and testimony in the instant case, demonstrates conclusively that federal law presents no bar whatsoever to the establishment of mutually satisfactory evaluative and referral relationships between employers and treatment programs.

I. THE RELEVANT STATUTE AND REGULATIONS

A. Disclosure of Treatment Records Without Patient Consent.

Federal statute provides that without a patient's prior written consent the content of his methadone maintenance treatment program records is to remain confidential. 21 U.S.C. §1175. In the absence of a court order, the only time a treatment program may identify a particular patient without consent and disclose the content of that patient's record is in the course of bona fide medical emergencies or in the course of confidential scientific research or program evaluation. 21 U.S.C. §1775(b)(2)(A and B). Non-consensual disclosure of a patient's record under court order is intended only for individual extraordinary circumstances. See 21 U.S.C. §1175(b)(2)(C).

The underlying rationale of the confidentiality provisions is described in the preface to implementing regulations:

> "Drug abuse in our society, at least with heroin, inevitably involves unlawful possession of drugs as a minimum criminal complication, and the very high cost of the heroin required to maintain a full-blown habit leads in many instances to a pattern of crimes against property. Socially, there is no more crushing a stigma than to be known as a junkie. If society is to make significant progress in the struggle against drug abuse, it is imperative that all unnecessary impediments to voluntary treatment be removed. There is clear agreement among drug abuse treatment program

> operators that their ability to assure patients and prospective patients of anonymity is essential to the success of their programs. The identification of a person as a patient of a general practitioner or hospital clinic is not ordinarily of great significance, but the identification of a person as an enrollee in a narcotic treatment program can, in and of itself, have profoundly adverse consequences." 37 Fed. Reg. 24636 (1972).

B. Disclosure of Treatment Records With Consent.

With prior written consent of a patient, federal law allows disclosure of the content of the patient's records for such purposes as may be prescribed by regulation. 21 U.S.C. §1175(b)(1). Employment is recognized by the regulatory agency to be a purpose justifying disclosure of the content of records. See 37 Fed. Reg. 24636 (1972). The pertinent regulation, 21 C.F.R. §1401.26, provides as follows:

> Evaluation in connection with rehabilitation.
> (a) Whenever a patient or former patient has been employed or is seeking employment and such employment is conditioned upon his status or progress in a treatment program, an evaluation of such status or progress by qualified medical personnel may be furnished to responsible employment services, agencies, or employers which have demonstrated their willingness to employ, or assist in the employment of, present or former drug abusers in a drug abuse treatment or rehabilitation program. Such organizations, agencies or employers shall maintain such evaluation as confidential and shall not disclose any part thereof to any other person or organization. Any disclosure under this section shall be subject to all of the following conditions:

> (1) The request for such an evaluation must be in writing and signed by the patient.
> (2) The request must identify the employer or official therein cooperating in the patient's rehabilitation program.
> (3) The treatment organization must verify the authenticity of the request by telephone or other means of communication and ascertain the extent that the information is need to verify the patient's treatment status.
> (4) The information shall be limited to that reasonably necessary in view of the type of employment involved.
> (5) No information may be furnished by a treatment organization unless the organization is satisfied on the basis of past experience or other credible information (which may in appropriate cases consist of a written statement by the employer) that such information will be used for the purpose of assisting in the rehabilitation of the patient and not for the purpose of identifying the individual as a patient in order to deny him employment or advancement because of his history of drug abuse. 1/

Thus federal law clearly authorizes the exchange of job-related information between methadone maintenance programs and employers demonstrating a willingness to consider former drug abusers for employment.

While a great amount of specific information may be furnished to an employer, the regulations apparently do not contemplate that the original, unevaluated treatment records are

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1/ Amendments to the confidentiality regulations were proposed on August 22, 1974. See 39 Fed. Reg. 30426 et seq. (1974). These proposed amendments would retain the current 21 C.F.R. §1401.26 in substantially identical form, but with a new heading, "Disclosures to Employers." 39 Fed. Reg. 30433.
(footnote continues)

to be conveyed. The promulgating agency has made clear, however, that the intent of the regulations is not to shield former drug abusers from genuine assessments of their employability, but to insure that such assessments are not inappropriately made by persons lacking the necessary expertise to interpret unexplained program records properly:[2/]

> Employment is an indispensable element of successful rehabilitation. Gainful employment in the case of a known former addict may be impossible to secure unless the prospective employer has some evidence that the individual either is currently enrolled in a treatment program or has successfully completed one. On the other hand, employers generally neither desire nor are capable of interpreting the raw data in the treatment program records. In recognition of this need, provisions have been included to permit treatment program operators to work with employers who have indicated their willingness to cooperate with drug rehabilitation programs.
> 37 Fed. Reg. 24636 (1972).

(footnote #1 continued)

Unlike the current regulations, the proposed regulations also contain a section prohibiting inquiries into non-job related drug use on general employment questionnaires. See proposed 21 C.F.R. §140.10, 39 Fed. Reg. 30431 (1974). Plaintiffs' counsel have been informed by the general counsel for the responsible agency, however, that it appears unlikely that this particular provision will actually be promulgated.

2/ The very real possibilities of misinterpreting program records were strikingly illustrated by the documentary evidence and the testimony in this case. For example, plaintiff Reyes' chart contained notations of "missed medication" and Diaz's of "missed medication," "alcohol abuse" and amphetamine use. Yet testimony by Dr. Trigg and other responsible personnel about program record keeping and medical practices indicated that these apparently negative indications were either totally inconsequential or actually misleading. Properly evaluated, Reyes' and Diaz' program records, together with the evaluations of program personnel, demonstrate that they are excellent methadone maintenance treatment program patients and superb candidates for employment.

II. THE STATUTE AND REGULATIONS IN PRACTICE

Testimony in this case has established conclusively that pursuant to the law described supra, workable and mutually satisfactory relationships have been established providing for the exchange of information between treatment programs and employers in the New York City area, relating to both prospective and current employees.

The range of information that may be released in practice was described most fully by Ms. Eileen Wolkstein, Director of Vocational Rehabilitation for the Beth Israel Methadone Maintenance Treatment Program. She testified as follows:

> Q: Have you made any attempt to follow up or do you make any attempt to follow up the job performance of persons that you place?
>
> A: Yes. We really -- I see that as a very integral part and that our job is really only half done when somebody is hired by a company and it is really our responsibility to the patient and to the company to do whatever we can to make sure that the person's entrance and functioning on the job meets the company's standards and meets the patient's needs, so we try to do follow up as long and as extensively as is possible.
>
> For example, if we place somebody on a job and help them get a job, we will make arrangements with them [the employer] to see them on a weekly or every other week basis to discuss with them what is going on, to communicate with the employer and try to really help the process along, realizing that there may be problems at first, and are available to work on these in whatever way is possible.

Q: Do you provide employers with evaluations pertaining to people in your program who are applying for jobs?

A: Yes. This is usually part of our negotiations with an employer where we will agree upon what kinds of information we can, within the boundaries of confidentiality and patient rights, we can share with the employer. We always get the applicant's permission to do that.

But we will share certain things like a person's summary, a clinical evaluation which will be a kind of personal social vocational summary, medical documentation that may come from the unit director physician in charge of the clinic and/or a psychiatrist. That's pretty standard, the kind of entry information and when I will refer somebody to a company I will send this and then they will review it and then call the applicant in for an appointment so that they have the background information and know as much as possible from documents as they can before they see the person.

Q: Other than that initial evaluation, if an employer desires further information, do you make any attempt to make that information available?

A: Yes, again, that's with the patient's permission and in accordance with what we do, but our effort is not to hold anything because that's really just detrimental to everybody and whatever can help the employer to do his job, the applicant, the employee do his job.

THE COURT: Let's get more specific. What would you be willing to -- what information would you be willing to give, periodic information about the applicant or the patient?

THE WITNESS: If the person say is working for the company, has gotten a job, I may get a phone call from a personnel department so and so was late to work two days this week, it may be a problem, will

you look into it, and I would say "Yes," I would get in touch with the client, have one of my staff members who is responsible for that clinic see the patient, discuss with him what is going on, what the nature of the problem was, if any, tell him how this is, you know, potentially injuring his employment, and then I will get feedback from the person and then I will call the employer and tell them what our interview with the client is, has come up with, what we felt the nature of the problem was, what we hope to do about it, and share that kind of information....

Q: With respect to job applicants, will you furnish an evaluation to employers as to whether or not the applicant has been drug free for a specified period of time.

A: Absolutely. Absolutely, that's part of -- that usually goes into the medical letter as well as my staff's clinical evaluation.

Tr. 423-26 (October 25, 1974)

. . . .

THE COURT: I think the question now is simply suppose that you have someone under employ at a company and then you find out through the urine specimen some day that he has taken some illicit drug. Would you be willing to voluntarily report that or would you be willing when asked or upon request -- the company calls up and says, "I wonder if you would answer a question. This man has been here the last six months. We were just wondering if you had any record of his using heroin."

Would you be willing to give information about heroin use, the results of the urine analysis occurring during the time of the employment?

THE WITNESS: In fact, at Con Edison we did make that information known and gave three-month reports, the result of our urine reporting. There was also in this case of the employment project one incident of drug abuse that became apparent in a screening urinalysis that was not done in the company. The medical director spoke to the employee, called me and I spoke to the doctor in charge of the clinic. The patient was spoken to and it is no longer a problem. But there was an incident of drug abuse.

THE COURT: The information was given?

THE WITNESS: The information was given. We didn't lie. The doctor called and said, "Have you had evidence?

We said, "Yes, we are aware of it. We are talking to the man. Would you be willing to just give us time to see him?"

There was no trouble with the performance. He wasn't late. He wasn't interfering. It was a spot urine check that there was evidence of perhaps drug abuse and we worked along with the doctor and the patient and this was maybe four months ago and has not been a problem and it was all honest.

THE COURT: You do have the arrangement that you will make three-month reports to Con Edison?

THE WITNESS: Right. Con Edison has asked for that and we do it there.

THE COURT: From the urinanalysis?

THE WITNESS: Yes. Some of the companies do their own screening periodically. They may do it more frequently in the beginning and once the person is in their employ they may stop or may do it once a year.

Q: Would you also undertake to tell the employer immediately upon a patient missing an appointment?

A: I think we would share things when they are relevant to employment. I think people have a certain amount -- if it interferes with their employment, then that is a problem. If a person has missed medication one day, that is not necessarily relevant to employment.

Q: Your answer to the question would be yes or no.

A: It would really depend upon what this reflected in terms of the person's employment.

Q: Let me ask the question once again: if an employer were to request of you that you notify the employer immediately upon his employee missing an appointment to pick up medication, would you comply with that request, assuming your patient agrees?

A: I think I would discuss that further with the employer only because I think that that is -- I don't know how warranted it is and I think I would want to see why that detailed information of a person's daily actions, occurrences that were going on were needed and what bearing it has on their employment.

Our goal is to have a person be able to function and not have more pressures than the average employee has on him.

THE COURT: If you could be persuaded by a given employer that it was necessary for them because of the peculiarities of their operation to know if necessary medication were missed, you would listen to that request?

THE WITNESS: Yes.

THE COURT: You would consider it?

THE WITNESS: And I would discuss it with the person.

THE COURT: You are not turning it down here now?

THE WITNESS: I don't turn anything down. I would want to know why they want the information, of what value is it, is it going to be punitive to the person, are we making more demands on the people than we would of other individuals?

THE COURT: And making more demands on your service?

THE WITNESS: Yes.

Q: Would you agree to notify the employer immediately upon the person being terminated by your program?

A: Yes, we have done that and in cases people have not been terminated from the job. It was leaving our program, which is not necessarily --

THE COURT: But that is the answer, you would notify of termination?

THE WITNESS: Yes.

Tr. 442-45 (October 25, 1974)

The effectiveness of relationships between treatment programs and employers was underscored by Dr. Thomas Doyle, Medical Director of the Consolidated Edison Company, during questioning by the Transit Authority. Dr. Doyle stated that he had dealt with a number of treatment programs, and he indicated that under relationships established with these programs he had never been denied any information pertinent to patients that he had requested, including urinalysis reports and whether patients had missed appointments.

He testified on cross examination as follows:

Q: What arrangements have you got with the program to give you information that you might feel you need at any time?

A: I telephone and ask for the information or I ask the patient to have the counsellor drop me a note confirming such and such. I do it on that basis.

Q: Is there any information you have ever asked for which has been refused for any reason?

A: No.

Q: Have you ever asked the program for the latest urinalysis that the program has on this individual

A: Yes.

Q: Have you ever asked the program for whether or not a patient has missed any of his prescribed medication?

A: Oh, yes.

Q: And they have given you that information?

A: Yes, sir.

MR. SUMMERS: Okay, thank you.

Tr. 572-73 (October 25, 1974)

CONCLUSION

There can be no doubt that, pursuant to law and prevailing treatment program practices in the New York City area, employers desiring to consider methadone patients for employment may obtain full and adequate information with respect to a patient's progress in treatment from his treatment program.

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Dated: New York, New York
February 21, 1975

Plaintiffs' Memorandum Relating to the Structure of the Transit Authority Employement System dated February 21, 1975

2/75 HB. Briefs
001-02
#28

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -X

CARL A. BEAZER, et al., :

Plaintiffs, :

-against- :

NEW YORK CITY TRANSIT AUTHORITY, et al., :

Defendants. :

- -X

72 Civ. 5307

(T.P.G.)

PLAINTIFFS' MEMORANDUM RELATING TO THE STRUCTURE OF THE TA EMPLOYMENT SYSTEM AS DEMONSTRATED BY THE TA RULES AND REGULATIONS (PX 58) AND THE EXPERIENCE AND OTHER ELIGIBILITY REQUIREMENTS FOR VARIOUS TA POSITIONS (PX 60)

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PLAINTIFFS' MEMORANDUM RELATING TO THE STRUCTURE OF THE TA EMPLOYMENT SYSTEM AS DEMONSTRATED BY THE TA RULES AND REGULATIONS (PX 58) AND THE EXPERIENCE AND OTHER ELIGIBILITY REQUIREMENTS FOR VARIOUS TA POSITIONS (PX 60)*

Introduction

The evidence to date--apart from the documents discussed herein--has demonstrated that the TA has an elaborate structure for selecting, training, monitoring, promoting and disciplining employees--a system designed to screen out at a series of stages persons who give any indication that they will not be fully capable of performing the duties of the position they are seeking or filling, a system with more than adequate flexibility to enable persons whose capabilities are considered suspect to be placed temporarily in positions

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* This memorandum will focus only on the TA titles, not the city-wide titles within the TA. The evidence in the case has clearly demonstrated the fact that there is nothing unique about the nature of the work involved in the city-wide titles within the TA; that, indeed, that is the very reason for their classification as city-wide titles; that persons performing in these titles are subject to close supervision; and that, indeed, the city has already indicated its view that methadone-maintained persons should be eligible for all positions in these titles through the promulgation of new medical standards for all of these positions (PX 10) implementing its Personnel Policy and Procedure Bulletin of March 22, 1972 (PX 7) which provided for opening city employment to methadone-maintained persons, although the TA has chosen to evade the city's policy and medical standards through use of the one-in-three rule to reject methadone-maintained persons from city-wide titles in the TA. See, e.g., Compilation of Agreed to and Contested Facts and supplement thereto, hereinafter referred to as PX 31 and PX 31A, Nos. 24-25 (pp. 31-39); No. 28 (pp. 43-44); Jenkins testimony trial Tr. January 31, 1975, pp. 777 ff.

where they can pose no danger to the riding public or their fellow employees.

Thus the evidence has shown that the TA employment system includes, inter alia:

(1) A classification of jobs between entry-level and promotional which limits applicants without prior TA work experience to the relatively unskilled or less sensitive jobs (see Crannen testimony, trial Tr. Feb. 12, 1975, pp. 1342-43, 1345; see generally id at pp. 1256 ff. and see PX 31 No. 31, pp. 50-51);

(2) A further classification of TA jobs according to various promotional lines according to the sensitivity and difficulty of the job, ensuring that applicants for certain promotional positions must have served in two or more appropriate positions below. See Crannen testimony, trial Tr. Feb. 12, 1975 pp. 1352-53; (see generally Crannen and Lindstrom testimony, trial Tr. Feb. 12, 1975, pp. 1256 ff. and 1420 ff);

(3) A general requirement that for each promotional position an applicant have served for a period of at least 1 year (6 months on a probationary basis and 6 months on a permanent basis) in the position below before he is eligible for the promotional examination, the period of prior service required varying in accordance with the sensitivity and difficulty of the promotional position involved, and ranging up to several years; this requirement, combined with the fact that

appointments are made from ranked eligibility lists, most of which have a life of 4 years, and new examinations are not given or new lists created until the old list has been exhausted, often means that even if only one year of prior service is formally required, many years will in fact have been served in the title below before a promotional position can be obtained (See Jenkins testimony, trial Tr. Jan. 31, 1975, pp. 822-25, as well as Crannen and Lindstrom testimony, cited supra);

(4) An elaborate system of screening applicants for each entry-level and each promotional job which includes a thorough background investigation, medical examination, and a civil service test which, where appropriate for the job, includes a physical component (See Crannen testimony, trial Tr. pp. 1284-85, 1287-92, 1356 ff; Jenkins testimony, trial Tr. pp. 841);

(5) A thorough training period as well as a minimum six months probationary period for each entry-level and each promotional job; (See Jenkins testimony, trial Tr. pp. 820-22, 837-39; Crannen testimony trial Tr. pr. 1261; Lindstrom testimony trial Tr. 1441-43, 1452-55).

(6) A promotional system which includes not only the components listed in Nos. 2 - 5, supra, but requires that as a part of the promotional test an applicant have demonstrated satisfactory performance of the duties of all previous TA employment. (See Crannen testimony, trial Tr. pp. 1356 ff.; Lindstrom testimony, trial Tr. pp. 1455; Jenkins testimony trial Tr. pp. 821).

The above demonstrates that a person cannot obtain any position in the TA without having thoroughly demonstrated his ability to perform the duties of that position. It further demonstrates that a person cannot obtain the kind of positions the TA has pointed to as particularly sensitive, such as motorman and towerman, without having demonstrated this ability through extensive periods of on-the-job performance with the TA.

Finally, the evidence to date relating to the TA's policies regarding problem drinkers, alcoholics and ex-alcoholics, as well as others suffering from various medical disabilities, demonstrates that the TA has the capacity to medically screen such persons, to monitor their performance to determine whether there is any cause to question their fitness to perform particular positions and, where it appears that their condition limits their capacity adequately to perform the duties of a particular position to reassign them.

(See Jenkins testimony, trial Tr. Jan. 31, 1975, pp. 826-29 ; Crannen testimony, trial Tr. Feb. 12, 1975, pp. 1265-68, 1290-91, 1315-16; Lindstrom testimony, trial Tr. p. 1445; PX 31 and 31A, Nos. 28-31 (pp. 43-51); PX 31 and 31A, Nos. 44-57 (pp. 57-70).

* * * * *

Plaintiffs Exhibits 58 and 60, to which this memorandum is addressed, supplement the picture of the TA employment structure already presented in three essential respects:

(1) The TA Rules and Regulations (PX 58) mandate a supervisory structure designed to ensure that the

fitness of key employees is checked and their performance monitored on a regular basis, as well as that the punctuality and performance of all employees is accounted for (pp. 5-12 , infra);

(2) The eligibility requirements for both entry-level and promotional jobs include, where appropriate, requirements of recent employment experience directly related to the duties of the job applied for, often for extensive periods of time (pp. 12-24 , infra);

(3) The Rules and Regulations indicate clearly the TA's authority to assign employees to particular jobs in accordance with the needs of the TA and the safety of the riding public, regardless of the nature of the employee's formal job title, the union contract, etc. (pp. 24-26 , infra).

These points will be discussed in some more detail below, and reference to certain of the relevant portions of the exhibits noted.

I. THE SUPERVISORY AND PERFORMANCE MONITORING STRUCTURE MANDATED BY THE RULES AND REGULATIONS

(A) Rules relating to responsibilities of certain supervisory employees responsible for checking the fitness and monitoring the performance of employees in such positions as motorman, bus conductor, etc.

Part II of the Rules, entitled "Rules and Regulations Relative to Duties and Responsibilities of Employees," sets forth the duties and responsibilities of, inter alia, certain key supervisory positions. We will not attempt to set forth or describe these here in detail since the Rules speak for

themselves, but we will quote certain portions of the Rules to demonstrate the extent to which they are designed to ensure that the fitness of TA employees is checked and their performance monitored on a regular basis.

Rule 102, governing "Motormen Instructors and Assistant Motormen Instructors", provides, inter alia:

> (b) They have general supervision over the qualification and performance of all motormen and conductors.
>
> (c) They must ride trains frequently and note the manner in which train service employees perform their duties and correct any improper actions. (emphasis added)
>
> (d) They must report promptly any violation of rules or neglect of duty on the part of train service employees.
>
> (e) They must conduct, as required, a school of instructions on car equipment and train operation for such employees as shall be designated by the proper authorities.

Rule 103, governing "Train Dispatchers", provides, inter alia:

> (b) They are responsible for the expeditious and correct dispatch and safe movement of trains within the limits assigned to them and will have supervision of all employees in train and yard service in their respective sections.

(d) They must report to the superintendent of their division any neglect of duty or infraction of rules which comes to their attention.

(g) They must keep records of all absent employees and of other employees who fill their places and of the time worked and must submit such records daily to the Assistant General Superintendent, Rapid Transit Operation, as may be required.

(h) At terminals they must ascertain that motormen and conductors in road service are in fit condition and proper uniform and at their posts on their trains two (2) minutes before their trains are scheduled to depart with all train identification equipment and other fixtures properly displayed and in place. When required they must also ascertain that conductors or any other employees assigned to platform duty are in fit condition and proper uniform and that they perform their duties as assigned. (emphasis added)

(i) They must not permit a train to start with a motorman or a conductor unfit for duty. They must remove any unfit employee from service and report such unfitness immediately to the Desk Trainmaster. (emphasis added)

Rule 104, governing "Yardmasters", provides, inter alia:

(b) They are responsible for all train movements in the yards to which they are assigned and must maintain accurate records thereof. They must see that all trains are properly made up and are ready for scheduled movement in accordance with the instructions of the trainmaster, assistant trainmaster or train dispatcher.

(c) They have charge of all train service employees in their yards and must ascertain that all employees are in fit condition to perform their duties. They must remove all unfit employees from service and report such unfitness immediately to the Desk Trainmaster.
(emphasis added)

> (g) They must keep records of all absent employees and of other employees who fill their places and of the time worked and must submit such records daily to the Assistant General Superintendent, Rapid Transit Operations, as may be required.

Rule 105, governing "Assistant Train Dispatchers", provides, inter alia:

> (b) They have charge of the crewing of trains and must keep Train Register Sheets on which they will note the time of arrival and departure of all trains, the car numbers, the names of the motormen and conductors and such additional information for submission to the superintendent as may be required. They must also enter on Train Register Sheets the names of motormen and conductors putting trains into, and laying trains up from, service.

Rule 112, governing "Station Supervisors", provides, inter alia:

> (b) They will supervise Station Department employees on duty within their assigned zones or other designated areas and must see that they comply with all rules, regulations and special instructions.

Rule 114, governing "Assistant Station Supervisors", provides, inter alia:

> (b) They are in charge of designated groups of stations or other designated areas and all employees of the Station Department assigned thereto. They are responsible for the manner in which all employees in their groups perform their duties and must see that they observe all rules and regulations and schedules of work prescribed for them.

Rule 123, governing "Surface Line Dispatchers", provides, inter alia:

> (b) At Surface Transportation locations they have charge of the assignment of surface line

operators and buses, keeping accurate records of the time worked by hourly paid Surface Transportation employees and of the mileage of buses. They must keep records of absent Surface Transportation employees and maintain personnel records. They must see that employees under their jurisdiction are in fit condition for duty and in proper uniform. They must not assign an unfit employee to duty. They must remove any unfit employee from service and report such unfitness immediately to the Surface Control Office. (emphasis added)

(d) They are responsible for the operation of buses in accordance with prescribed schedules within the territory to which they are assigned and must clear blockades and restore normal operation when delays occur. They must report frequently by telephone or radio and must make accurate, complete daily written reports of the activities on the routes under their supervision and of all accidents and unusual occurrences of which they have information. They must assist in loading buses and check service and loads on buses at points designated by their supervisors.

(e) They have supervision of the conduct and performance of surface line operators and must report infractions of the rules or of special instructions.

(f) They must ride buses frequently and note the manner in which surface line operators perform their duties and correct any improper actions. (emphasis added)

(g) They must conduct, as required, a school of instructions on bus equipment and bus operation for such employees as shall be designated by the proper authorities.

Rule 148, governing "Foremen (Railroad Watchmen)", provides, inter alia:

(c) They must make entry on their Daily Work Sheets of the times of their arrival at and times of their departure from each post they visit. They must inspect Registry and Control Sheets to determine whether entries are in proper time sequence. They must inspect clock tapes and, if clock winds are incomplete, must make proper

> entries on said tapes and on their work sheets. They must check the condition of railroad watchmens' booths and the condition of Authority property under the jurisdiction of the Special Inspection Department. The condition of both must be noted on their work sheets. Said work sheets must be forwarded to the office of the department daily.
>
> (g) They are responsible for the conduct and performance of all railroad watchmen in their respective sectors and must report all infractions of the rules.
>
> (h) They must remove from duty such railroad watchmen as they find unfit for duty and report same to the Special Inspection Control Desk.

See also, e.g., Rule 99 (b) and (c) governing the duties of Trainmasters and Assistant Trainmasters.

(B) Rules relating to punctuality, time record keeping, supervision, safety, etc. *

A series of rules govern punctuality and time record keeping requirements. The following examples give some indication of the strictness and pervasiveness of these requirements.

> Rule 5 governs "Reporting for Duty", and Rule 6, governs "Records [and] Time Cards...", and provides, inter alia:
>
> > (a) Heads of departments or bureaus and employees assigned to direct and supervise the work of other employees must maintain complete records of the employees under their direction or supervision and must keep accurate accounts of the time of each such employee.

Rules governing the sign-in procedures for particular titles are often extremely specific in their attempt to ensure accuracy and supervision. See, e.g., Rule 117(t):

> > All Railroad Clerks, except those assigned to booths manned 24 hours a day will enter on the Time Control Log form the time they report "ON" and "OFF" duty at the head booths or other designated booths. Recording of the time will be made at the time of the occurrence and not

---

* Testimony at trial regarding supervision and the necessity for virtually all employees to sign on and off duty personally

> in anticipation of it. Each entry must be initialled by the Railroad Clerk on duty at the 24 hour booth.

Other rules make it clear that each employee must report and be responsible to specified supervisors. See, e.g., Rule 106(a) (Motormen); 107(a) (Conductors Assigned to Train Service); 108(a) (Conductors Assigned to Platform Duty); 109(a) (Towermen); 117(a) (Railroad Clerks); 119(a) (Railroad Porters); 120 (Railroad Porters Assigned to Other Departments); 128(a) (Maintainers).

The rules not only define the duties of various positions but are often very specific as to the extent to which and the circumstances under which one employee may be permitted to perform the duties of another. See, e.g., Rule 119(c)-(e) governing Railroad Porters:

> (c) They must, upon authorization by the supervision in the department office, give comfort reliefs--NOT TO EXCEED TEN (10) MINUTES EACH--to railroad clerks on duty in their stations, to permit them to visit toilets. These reliefs must be given only in cases of emergency. In the event that any railroad clerk abuses the privilege of having porters give comfort reliefs or overstays any ten (10) minute period such fact must be reported immediately to the station supervisor by telephone.
>
> (d) They are authorized to make lunch reliefs when assigned to such duties. Under no circumstances shall they make any lunch relief except when so assigned.
>
> (e) They are expressly prohibited from entering the change booths, except for the purpose of cleaning or for the purpose of giving an authorized relief. When cleaning has been completed or relief has been made, they must leave booths immediately and must not, in any case, loiter in or around booths.

(footnote continued) or by telephone included, e.g., Jenkins, trial Tr. 808 ff., 810-12, 815-17; Crannen trial Tr. pp. 1256 ff. note esp. pp. 1262-63); Lindstrom trial Tr. pp. 1419 ff. (note 1451-52)

With respect to safety, Rule 11(s) provides:

> Employees must not enter upon or cross the tracks of the System or enter any yard, storage area or other enclosure of the System, except when absolutely necessary in the performance of duty.

See also Lindstrom trial Tr. 1449-50. And Rules 66-77 consist of very specific and elaborate "Flagging Rules" designed to ensure, through defining the duties of Flagmen and others, the safety of all working on the tracks. See also Crannen trial Tr. 1283.

II. JOB EXPERIENCE ELIGIBILITY REQUIREMENTS FOR CERTAIN ENTRY-LEVEL AND PROMOTIONAL TA TITLES

Plaintiffs' Exhibit 60 constitutes a series of Notices of Examination and Class Specifications submitted by the City defendants in response to plaintiffs' request for the most recent such documents. They set forth the eligibility requirements for the various positions. They are arranged within PX 60 in alphabetical order according to title.

These documents demonstrate that on entry-level examinations the TA can establish whatever recent job experience requirements it considers appropriate, and that it frequently does require recent experience, for extensive periods of time (in the range, e.g., of 4-5 years), in work directly related to the duties of the position sought (for such positions as, e.g., Car Maintainer, Bus Maintainer and Railroad Stock Assistant).

These documents demonstrate further that on promotional examinations the TA not only requires service in the position below for periods ranging from a minimum of one year* upwards, but in addition often requires outside directly relevant job experience as well

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* When the documents refer to a requirement of six months' permanent service, this means six months in addition to the six months' required probationary service in the title below.

(e.g., 7 years for a senior painting inspector, 4 years for a turnstile maintainer).

Finally, these documents demonstrate that for certain job titles that the TA apparently considers to involve particularly complicated or sensitive work, two or more levels of prior TA job service are required (e.g., train dispatchers and train masters).

Without attempting to be exhaustive we will simply refer here to examples of the kinds of prior job experience typically included among the eligibility requirements of various TA titles. Other examples are contained in the documents included in Plaintiffs' Exhibit 60.

For the Court's convenience we will first go through the titles listed in PX 31, No. 31, pp. 50-51 as entry level or entry level and promotional, although the record now indicates that this list is not entirely accurate in indicating which titles are entry level as opposed to promotional. (See Crannen & Lindstrom trial Tr. pp. 1326 ff, 1457-59. We will then list several promotional titles not included on that list.

Conductor

As PX 60 indicates the two most recent examinations for this position have been promotional. Requirements for the February 15, 1975 examination included "at least one year's permanent service as a Shop and Car Serviceman (Car Maintenance) by Feb. 15 or at least two years' permanent service as a Car Cleaner, Railroad Porter, Railroad Caretaker or Railroad Watchman."* Requirements for the previous examination, held March 24, 1973, were identical.

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* Again it should be noted that any period of required permanent service is in addition to the six months required probationery service below.

Railroad Clerk

As PX 60 indicates, the eligibility requirements for the September 22, 1973 examination for this position, which was promotional, were:

> ELIGIBILITY REQUIREMENTS: Open to each employee of the New York City Transit Authority who on the date of the written test: (1) is permanently employed in the title of Railroad Porter, Railroad Watchman, Railroad Caretaker, Car Cleaner, or Shop and Car Serviceman (Car Maintenance); (2) has served as permanent employee in such title or titles in the Transit Authority for a period of not less than six months immediately preceding that date; and (3) is not otherwise ineligible.

Railroad Stock Assistant

PX 60 indicates that the eligibility requirements for this position when given as an entry-level examination include:

> MINIMUM REQUIREMENTS: Candidates must meet the following training and/or experience requirements on the date the application is filed: three years of full-time, paid experience, acquired within the last ten years, in an industrial, manufacturing or wholesaling business, stocking railroad, automotive, machine, aircraft or marine maintenance tools and production parts; or stocking plumbing, hardware or sheet metal supplies and tools. High school graduation or evidence of having passed an examination for high school equivalency diploma or U.S. Armed Forces G.E.D. certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate will be accepted in lieu of one year of the required experience. (Each year of high school will be accepted as equivalent to three months of experience.)

Turnstile Maintainer

PX 60 indicates that the eligibility requirements for this position when given as an entry-level examination include:

MINIMUM REQUIREMENTS: Four years of recent satisfactory experience in any of the following four categories: (1) as a mechanic in the maintenance or construction of fare-collecting turnstiles, coin boxes or registration meters similar to those used on subways and buses; or (2) as a mechanic in the maintenance or construction of intricate mechanical machinery, instruments or devices such as modern cash registers and comptometers; or (3) as a machinist in general machine shop work; or (4) a manifestly equivalent combination of any of the foregoing. Helper experience or relevant trade education will be credited on a basis of six months credit for each year of such experience or education. These requirements must be met by an applicant on the date he files his application.

Electronic Equipment Maintainer

The notice of examination dated September 19, 1973 in PX 60 indicates that when given as a promotional examination the eligibility requirements include the following:

ELIGIBILITY REQUIREMENTS: Open to each employee of the New York City Transit Authority who on the date of the written test: (1) is permanently employed in the title of Maintainer's Helper-Group A or Electronic Equipment Maintainer's Helper; (2) has served as a permanent employee in such title or titles in the Electronic Equipment Section of the Maintenance of Way Department for a period of not less than six months immediately preceding that date; and (3) is not otherwise ineligible.

The class specification for that position dated November 1, 1965 indicates that when given as an entry-level examination the eligibility requirements include the following:

Qualification Requirements

1. Four (4) years of recent, satisfactory experience at the journeyman level in

the construction, installation, operation, or maintenance of electronic equipment of a nature relevant to the duties of the position. To be accepted at the journeyman level, experience must be preceded by at least two years of relevant training or education which will be credited on a basis of six months of credit for each year of such experience or education.

2. Candidates must posses a valid Commercial Radiotelephone, Second Class Operator's License issued by the Federal Communications Commission.

Light Maintainer

PX 60 indicates that when given as a promotional examination the eligibility requirements include:

> Eligibility Requirements: Open to each employee of the New York City Transit Authority who on the date of the written test: (1) is permanently employed in the title of Maintainer's Helper-Group A; (2) has served as a permanent employee in such title in the lighting section of the maintenance of way department of the transit authority for a period of not less than six months immediately preceding that date; and (3) is not otherwise ineligible.

Maintainer's Helper-Group A

This is solely a promotional position. See PX 31, No. 31, p. 50. The eligibility requirements include:

> Eligibility Requirements: Open to each employee of the New York City Transit Authority who on the date of the written test: (1) is permanently employed in the title of Railroad Caretaker or Railroad Porter; (2) has served as a permanent employee in such title or titles in the power and/or maintenance of way departments of the transit authority for a period of not less than two years immediately preceding that date; and (3) is not otherwise ineligible.

Maintainer's Helper-Group B

The eligibility requirements for this when given as a promotional examination on January 6, 1973 were:

> ELIGIBILITY REQUIREMENTS: Open to each employee of the New York City Transit Authority who on the date of the written test is either: (1) permanently employed in the title of Shop and Car Serviceman (Car Maintenance) and has served as a permanent employee in said title in the Transit Authority for a period of not less than one year immediately preceding that date; or (2) permanently employed in the title of Car Cleaner, Railroad Porter, Railroad Caretaker or Railroad Watchman, and has served as a permanent employee in such title or titles in the Transit Authority for a period of not less than two years immediately preceding that date; and (3) is not otherwise ineligible.

Maintainer's Helper-Group D

The eligibility requirements for this entry-level position are:

> Qualification Requirements
> Candidates must meet one of the three following experience or educational options: (a) three (3) years of recent satisfactory experience as a helper or mechanic in the maintenance, repair, or construction of structures involving any one of the following trades-carpentry, iron work, masonry, plumbing, or sheet metal work; or (b) graduation from a recognized trade or vocational school, technical high school, or college after completion of a three or four-year day course in any one of the above structural trades; or (c) a manifestly equivalent combination of the foregoing experience and education. At least six months of the required education or experience must have been within the past five years.

Trackman

While PX 60 indicates there are no formal educational or experience requirements it also provides an example of the kind of physical tests which may be included as part of the civil service examination. Thus, for this position, eligibles are required to pass not only a medical test but the following physical test:

> The physical test will consist of four subtests. In one subtest, eligibles will be required to broad jump a distance of four feet, from a standing position, taking off with both feet at the same time. In another subtest, eligibles will be required to lift from a stop position at the shoulder to full arm vertical extension a 45 pound dumbbell with one hand and a 50 pound dumbbell with the other, one hand at a time. In another subtest eligibles will be required to lie in a supine position, feet held down, assume a sitting position carrying a 15 pound barbell behind the neck and back to the supine position, still under control. In the other subtest, eligibles will be required to climb approximately 6 1/2 feet up a ladder type trestle, mount a platform affixed thereto, walk approximately 9 feet to another ladder type trestle, turn around, and climb down, within 30 seconds.

Ventilation and Drainage Maintainer

The notice of examination for this position was previously submitted as PX 53 and indicates that when given as a promotional examination on December 19, 1973, the eligibility requirements included:

> ELIGIBILITY REQUIREMENTS: Open to each employee of the New York City Transit Authority who on the date of the written test: (1) is permanently employed in the title of Maintainer's Helper - Group B; (2) has served as a permanent employee in such title in the Ventilation and Drainage Section of the Maintenance of Way Department of the Transit Authority for a period of not less than six months immediately preceding that date: and (3) is not otherwise ineligible.

Car Maintainer - Groups A, B, C, E, F

PX 60 indicates that the eligibility requirements for these as entry-level positions are as follows:

Group A:

Minimum Requirements: Candidates must meet the following training and/or experience requirements acquired within the last ten years, on the date the application is filed: (A) five years of full-time, paid experience at the mechanical level in the construction or installation of mechanical and/or structural equipment on subway or railroad cars as described under "Duties and Responsibilities"; or (B) working from blueprints in any of the following: (1) fabrication of steel enclosures and assemblies from steel plate and shapes; (2) electric and acetylene welding and cutting of heavy-gauge metal; (3) forge and incidental sheet metal work, using all associated tools and power equipment.

High school graduation or evidence of having passed an examination for high school equivalency diploma or United States Armed Forces G.E.D. certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate will be accepted in lieu of one year of the required experience. (Each year of high school will be accepted as equivalent to three months of experience.) A maximum of two years of experience as a helper in any of the fields described above will be accepted toward meeting the minimum requirements on the basis of two years of helper experience being equivalent to one year of mechanic level experience.

HOWEVER, CANDIDATES OFFERING EDUCATION AND/OR HELPER EXPERIENCE MUST HAVE FOUR YEARS OF THE MECHANIC LEVEL EXPERIENCE.

Group B:

MINIMUM REQUIREMENTS: Candidates must meet the following training and/or experience requirements, acquired within the last ten years, on the date the application is filed: five years of full-time paid experience at the mechanic level as a machinist in a machine shop on machine and bench work including experience on the lathe, milling machine, boring mill and drill press. High school

graduation or evidence of having passed an examination for the high school equivalency diploma or U.S. Armed Forces G.E.D. certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate will be credited in lieu of one year of the required experience. Each year of high school will be accepted as equivalent to three months of experience. A maximum of two years of experience as a helper in machine shop work will be accepted toward meeting the minimum requirements on the basis of two years helper experience being equivalent to one year of mechanic level experience.

HOWEVER, CANDIDATES OFFERING EDUCATION AND/OR HELPER EXPERIENCE MUST HAVE FOUR YEARS OF MECHANIC LEVEL EXPERIENCE.

Group C:

Minimum Requirements: Candidates must meet the following training and/or experience requirements on the date the application is filed: five years of full-time, paid experience, acquired within the last ten years, as a painter doing inside and outside spray painting of metal surfaces including preparation and all coats, matching colors and mixing paints, and the care of spray equipment. High school graduation or evidence of having passed an examination for high school equivalency diploma or United States Armed Forces G.E.D. certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate will be accepted in lieu of one year of the required experience. (Each year of high school will be accepted as equivalent to three months of experience.) A maximum of two years experience as a helper in spray painting work will be accepted toward meeting the minimum requirements on the basis of two years of helper experience being equivalent to one year of mechanic level experience.

HOWEVER, CANDIDATES OFFERING EDUCATION AND/OR HELPER EXPERIENCE MUST HAVE FOUR YEARS OF MECHANIC LEVEL EXPERIENCE.

Group E:

MINIMUM REQUIREMENTS: Candidates must meet the following training and/or experience requirements, acquired within the last ten years, on the date the application is filed: five years of full-time paid experience at the mechanic level (A) performing electrical inspection, maintenance, trouble-shooting and repairs on multiple-unit electric railroad cars or diesel-electric locomotive; or (B) constructing, installating, inspecting, and maintaining complex electro-mechanical equipment. Candidates will be credited with a maximum of two years experience for armature winding and/or motor repair work. High school graduation or evidence of having passed an examination for the high school equivalency diploma or U.S. Armed Forces G.E.D. certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate will be accepted in lieu of one year of the required experience. Each year of high school will be accepted as equivalent to three months of experience. A maximum of two years of experience as a helper in electrical work will be accepted toward meeting the minimum requirements on the basis of two years helper experience being equivalent to one year of mechanic level experience.

HOWEVER, CANDIDATES OFFERING HIGH SCHOOL EDUCATION AND/OR HELPER EXPERIENCE MUST HAVE FOUR YEARS OF MECHANIC LEVEL EXPERIENCE.

Group F:

MINIMUM REQUIREMENTS: Candidates must meet one of the following experience requirements, acquired within the last ten years:

five years of full-time paid experience at the mechanic level (a) erecting, maintaining or assembling heavy machinery or heavy mechanical equipment; or (b) repairing heavy automotive mechanical equipment; or (c) performing heavy mechanical construction work, such as installing conveyors or elevators; or (d) performing work on subway or railroad cars, of the type described under: "Examples of Typical Tasks".

Exaples of acceptable work experience: mill-wright; bench mechanic assembling heavy items; machine operator working with heavy stock to close tolerances; mechanic engaged in maintenance work on tracks, bulldozers, tractors, and road graders, such as the removal, replacement and alignment of motors, axles, differentials and transmissions. AUTOMOTIVE TUNE-UP AND ELECTRICAL WORK WILL NOT BE ACCEPTED.

High school graduation or evidence of having passed an examination for the high school equivalency diploma or United States Armed Forces G.E.D. certificate with a score of at least 35 on each of the five tests and an overall score of at least 225 in the examination for the diploma or certificate will be accepted in lieu of one year of the required experience. Each year of high school will be accepted as equivalent to three months of experience.

Relevant full-time helper experience in mechanical work will be credited on the basis of six months of experience for each year of such helper experience up to a maximum of one year's credit.

THE MAXIMUM CREDIT FOR A COMBINATION OF RELEVANT HELPER EXPERIENCE AND EDUCATION SHALL NOT EXCEED ONE YEAR.

THEREFORE, CANDIDATES OFFERING HIGH SCHOOL EDUCATION AND / OR RELEVANT HELPER EXPERIENCE MUST HAVE FOUR YEARS OF MECHANIC LEVEL EXPERIENCE.

The Omnibus Promotion Notice of Examination included in PX 60 indicates that the above Car Maintainer titles may also be promotional, and that when they are prior experience in a related TA title for one year is required.

Maintainer's Helper-Group C

PX 60 indicates that eligibility requirements on the entry level include the following:

> Qualification Requirements
>
> Candidates must meet one of the three following experience or educational options: (a) three years of recent satisfactory experience as a helper or mechanic in the maintenance, repair, construction, or installation of electrical equipment of a nature relevant to the duties of the position; or (b) graduation from a recognized trade or vocational school, technical high school or college after completion of a three or four-year day course in the electrical field; or (c) a manifestly equivalent combination of the foregoing experience and education. At least six months of the required education or experience must have been within the past five years.

Bus Maintainer-Group B

PX 60 indicates that on the entry level eligibility requirements include the following:

> Qualification Requirements
>
> Four years of recent satisfactory experience at the level of mechanic in the general maintenance or repair of passenger automobiles, trucks, or buses including engines, transmissions and brakes. Helper experience or relevant trade education will be credited on a basis of six months of credit for each year of such experience or education.

Plaintiffs' Exhibit 60 also indicates that for promotional positions, not only is one year's service in a lower level job a minimum prerequisite

(see, e.g., Structure Maintainer - Groups A-G), but that often longer periods of prior service are required (see, e.g., Assistant Station Supervisor, 1 1/2 years prior service required).

Plaintiffs' Exhibit 60 also indicates that even on the promotional level, other related job experience may be required as well. Thus the eligibility requirements for the promotional position of Senior Painting Inspector include:

> Seven (7) years of recent, satisfactory, full-time, paid experience as a painter or painting inspector of which one (1) year must have been in a supervisory capacity.

Finally, Plaintiffs' Exhibit 60 indicates that for certain positions extensive experience on at least two previous levels of TA employment is required (see, e.g., Train Dispatcher Notice, requiring 1 1/2 years service in titles that are themselves promotional).

III. RULES REGARDING TA AUTHORITY TO ASSIGN EMPLOYEES TO SPECIFIC POSITIONS IN ACCORDANCE WITH THEIR ABILITIES

The TA's flexibility to assign employees to specific positions for which they appear suited, regardless of their formal job title, is amply demonstrated by the record, including but not limited to the evidence relating to the TA's policies regarding alcoholics and persons with various physical disabilities.

Certain of the Rules provide additional support for the TA's obvious authority in this regard. See generally Rule 1 governing "Appointments to Positions; Assignment to Work".

See also:

Rule 31 (d) providing that with respect to an employee who has developed a disability:

> ...in view of the increased value of the service of an employee because of his experience and familiarity with his duties and in order to prevent any undue hardship, an employee will not be removed from service, temporarily or permanently, unless the disability found on examination is such as will interfere with the proper performance of his duties or jeopardize the safety of himself or others.

Rule 31 (e) providing:

> A permanent employee who has incurred a disability due to a medical condition incapacitating such employee for the performance of the duties appropriate to that employee's title may be reassigned, with the approval of the General Manager and the City Civil Service Commission, to a position entailing restricted duties and for which such employee is found medically qualified, provided that such reassignment does not involve an increase in salary or a promotion, except as otherwise provided in the working conditions adopted by the Authority governing disabled employees.

Rule 31 (f) providing:

> An employee who shall be temporarily relieved from service by reason of a mental or medical impairment which incapacitates such employee from properly performing his assigned duties or an employee who in accordance with (e) above has been reassigned with the approval of the General Manager and the City Civil Service Commission to a position entailing restricted or alternative duties will, unless in the meantime his employment has been terminated, be restored to the service or assigned to such employee's original assignment when, in the opinion of the medical staff of the Authority, the cause of disability has been corrected or improved to such an extent as to warrant return to the service, or to such original assignment.

While no provision in the Union contract limiting the TA's rights in this regard would be relevant to the federal rights

at issue in this lawsuit, it is in any event of interest to note that the "Agreement between New York City Transit Authority and Transport Workers Union of America, AFL-CIO, and Transport Workers Union of America, Local 100, AFL-CIO", effective April 1, 1974, specifically provides as follows:

> Article III. Management Rights.
>
> Without limitation upon the exercise of its statutory powers or responsibilities, the Authority shall have the unquestioned right to exercise all normally accepted management prerogatives, including the right to fix operating and personnel schedules, impose layoffs, determine work loads, arrange transfers, order new work assignments, and issue any other directive intended to carry out its managerial responsibility to operate the transit lines safely, efficiently, and economically.

Respectfully submitted,

Elizabeth B. DuBois

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Attorneys for Plaintiffs

Dated: New York, New York
February 21, 1975

Letter of Elizabeth B. DuBois dated July 29, 1975 to Court (re Methadone Maintenance Treatment Programs' Confidentiality Regulations

LEGAL ACTION CENTER 271 MADISON AVENUE NEW YORK, N.Y. 10016 (212) 679-650

By Hand

July 29, 1975

The Honorable Thomas P. Griesa
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Beazer v. New York City Transit Authority
72 Civ. 5307

Dear Judge Griesa:

In a post trial memorandum dated February 21, 1975, plaintiffs summarized for the Court applicable federal law governing the confidentiality of methadone maintenance treatment program records. Since the submission of that memorandum, new regulations have been published by the Department of Health, Education and Welfare which will on August 1, 1975 supersede the regulations described therein. For the Court's convenience, we are enclosing herewith a copy of the new regulations as they appeared in the Federal Register on July 1, 1975. (40 Fed. Reg. 27802 et seq. (1975)). The portion of the regulations pertinent to employers' inquiries regarding the treatment status of methadone patients provides as follows:

> §2.33 Employers and employment agencies.--Rules.
> (a) Disclosure permitted. Where consent is given in accordance with §2.31, a program may make disclosures in accordance with this section.
> (b) Eligible recipients. A program may make disclosures under this section to public or private employment agencies, employment services, or employers.
> (c) Scope of disclosure. Ordinarily, disclosures pursuant to this section should be limited to a verification of the patient's status in treatment or a general evaluation of progress in treatment. More specific information may be furnished

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where there is a bona fide need for such information to evaluate hazards which the employment may pose to the patient or others, or where such information is otherwise directly relevant to the employment situation.

(d) Criteria for approval. A disclosure under this section may be made if, in the judgment of the program director or his authorized representative appointed as provided in §2.17(b), the following criteria are met:

(1) The program has reason to believe, on the basis of past experience or other credible information (which may in appropriate cases consist of a written statement by the employer), that such information will be used for the purpose of assisting in the rehabilitation of the patient and not for the purpose of identifying the individual as a patient in order to deny him employment or advancement because of his history of drug or alcohol abuse.

(2) The information sought appears to be reasonably necessary in view of the type of employment involved.

§2.38-1 Employers and employment agencies.--Basis and purpose.

Section 2.38 is based on the rulemaking power conferred by subsection (b)(1) of the authorizing legislation, and is adapted from §1401.26 of the previous regulations. Its purpose is to allow disclosures reasonably necessary and appropriate to facilitate the employment of patients and former patients, while protecting patients against unnecessary or excessively broad disclosures. It was urged in a comment received on the August 22, 1974 draft that disclosures to employers be flatly prohibited on the ground that the employer's sole legitimate concern is with on-the-job performance. While we are not unsympathetic to this view, a countervailing consideration is that in the case of an employee or applicant who is known by the employer to have a problem with drugs or alcohol, knowledge by the employer of a genuine effort by the employee to deal with it can make the difference between a job and no job.

Letter of Elizabeth B. DuBois dated July 29, 1975

As we concluded in our February 21 memorandum, these regulations and the testimony of treatment personnel adduced at trial leave no doubt that employers desiring to consider patients for employment may obtain from methadone programs full and adequate information with respect to patients' progress in treatment.

Yours truly,

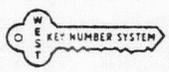
Elizabeth B. DuBois

Elizabeth B. DuBois
Attorney for Plaintiffs

EBDB:PR
Enclosure
cc: Edward W. Summers, Esq.
W. Bernard Richland, Esq.

at trial. The complaint alleges that the directors of Air Cal were officers or directors of Westgate, or served at the pleasure of the directors of Westgate. It is contended that these directors were acting to waste and loot the assets of Air Cal for the benefit of themselves and Westgate. Plaintiff further states that Westgate had entered into an agreement with PSA for sale of its controlling interest in Air Cal at a substantial profit. In light of these contentions, it would be unrealistic to expect the directors of Air Cal to bring an action against PSA to protect the interests of Air Cal, where such action would jeopardize the PSA-Westgate agreement, which these directors had approved personally.

Defendant's motions for summary judgment are denied.



Carl A. BEAZER et al., Plaintiffs,

v.

NEW YORK CITY TRANSIT AUTHORITY et al., Defendants.

No. 72 Civ. 5307.

United States District Court,
S. D. New York.

Aug. 6, 1975.

A class action was brought against a transit authority and certain officials, upon grounds of unconstitutionality of a blanket exclusion, from any form of employment, of all former heroin addicts participating in methadone maintenance programs and even former heroin addicts who had successfully concluded their participation in a methadone program. The District Court, Griesa, J., held that the transit authority's blanket ban against employment of such persons in any position in the transit authority was a violation of due process and equal protection clauses of the Fourteenth Amendment. Constitutional considerations did not prevent the transit authority from making reasonable rules and regulations about methadone-maintained persons, however.

Injunctive relief to be granted.

1. Constitutional Law ⇐211, 253(2)

Public entities such as transit authority cannot bar persons from employment, whether new applicants or existing employees threatened with termination, on basis of criteria which have no rational relation to demands of jobs to be performed; to do so is violation of both due process and equal protection clauses of Fourteenth Amendment. U.S.C.A.Const. Amend. 14; 42 U.S.C.A. §§ 1981, 1983; Civil Rights Act of 1964, §§ 701 et seq., 706(f) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f)(3); Civil Service Law N.Y. § 61.

2. Constitutional Law ⇐211, 253(2)

Transit authority's blanket ban against employment of all present and past methadone-maintained persons in any position in the transit authority was violation of due process and equal protection clauses of Fourteenth Amendment. U.S.C.A.Const. Amend. 14; 42 U.S.C.A. §§ 1981, 1983; Civil Rights Act of 1964, §§ 701 et seq., 706(f) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f)(3); Civil Service Law N.Y. § 61; Drug Abuse Office and Treatment Act of 1972, §§ 408(a, b), (b)(1), (g), 413(c), 21 U.S.C.A. §§ 1175(a, b), (b)(1), (g), 1180(c).

3. Municipal Corporations ⇐217.3(4)

Constitutional considerations did not prevent transit authority from making reasonable rules and regulations about methadone-maintained persons, such as requiring satisfactory performance in program for period of time such as a year, or denying methadone-maintained persons employment in sensitive categories such as that of subway motorman, subway conductor, subway towerman, bus driver and jobs dealing with high-voltage equipment. U.S.C.A.Const.

Amend. 14; 42 U.S.C.A. §§ 1981, 1983; Civil Rights Act of 1964, §§ 701 et seq., 706(f) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f)(3); Civil Service Law N.Y. § 61; Drug Abuse Office and Treatment Act of 1972, §§ 408(a, b), (b)(1), (g), 413(c), 21 U.S.C.A. §§ 1175(a, b), (b)(1), (g), 1180(c).

4. Municipal Corporations ⇨217.3(4)

Constitutional considerations did not prevent employers, including transit authority, from inquiring of employees or applicants for employment, whether they are or were on methadone maintenance programs, and, on such inquiry, employees or applicants would be obligated to disclose the facts. U.S.C.A. Const. Amend. 14; 42 U.S.C.A. §§ 1981, 1983; Civil Rights Act of 1964, §§ 701 et seq., 706(f) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e-5(f)(3); Civil Service Law N.Y. § 61; Drug Abuse Office and Treatment Act of 1972, §§ 408(a, b), (b)(1), (g), 413(c), 21 U.S.C.A. §§ 1175(a, b), (b)(1), (g), 1180(c).

Eric D. Balber, Mark C. Morril, Elizabeth B. DuBois, Legal Action Center for the City of New York, New York City, for plaintiffs.

Edward W. Summers, Brooklyn, N. Y., and Gilbert T. Dunn, of counsel, for Transit Auth.

A. Michael Weber, Brooklyn, N. Y., Asst. Corp. Counsel, for Civil Service Commission.

William A. Roskin, New York City, for Dept. of Personnel, Civil Service Commission.

OPINION

GRIESA, District Judge.

This is a class action against the New York City Transit Authority ("TA") and the Manhattan and Bronx Surface Transit Operating Authority ("MABSTOA") and certain of their officials. For convenience, both of these entities will usually be referred to hereafter collectively as "the TA." Also sued are the New York City Civil Service Commission and the New York City Personnel Department and certain officials thereof.

The action challenges the blanket exclusion from any form of employment in the New York City subway and bus systems of all former heroin addicts participating in methadone maintenance programs, regardless of the individual merits of the employee or the applicant. Plaintiffs also allege that there is a similar exclusionary policy even against former heroin addicts who have successfully *concluded* their participation in a methadone program.

The amended complaint alleges that this policy violates the due process and equal protection clauses of the Fourteenth Amendment, and federal civil rights statutes, 42 U.S.C. §§ 1981 and 1983. The claim is that there is no legal basis for classifying all present and former methadone maintenance patients as unemployable for any position in the TA.

Plaintiffs also allege that the exclusionary policy has a disparate impact on blacks and Hispanics, resulting in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*

Jurisdiction is invoked under 28 U.S.C. §§ 1331(a) and 1343(3) and (4), and also 42 U.S.C. § 2000e-5(f)(3).

Plaintiffs seek declaratory and injunctive relief on behalf of the class, and certain monetary relief on behalf of the named plaintiffs.

Parties

The Four Named Plaintiffs

Carl A. Beazer, a black, is 40 years old. Beazer started working for the TA in 1960 as a subway car cleaner. He was promoted to subway conductor in 1961, and was further promoted to towerman in 1966. Beazer was dismissed from his employment on November 26, 1971 after a heroin addiction problem came to light.

Beazer had been a heroin addict since about 1952. This addiction continued during virtually the entire time of his employment by the TA, lasting until May 1971, when he entered into the methadone maintenance program of the Veterans Administration. He has been a successful participant in the methadone maintenance program since that time. The uncontradicted evidence is that, like many new methadone patients, he experimented briefly with the resumption of heroin during the early days of his methadone treatment, but he has been entirely free of heroin or other illicit drug use for over three years. Beazer ceased using methadone in November 1973.

Following his dismissal from the TA, Beazer has been steadily employed—first as a counselor in the Detoxification Program of the Veterans Administration, then as a supervisor with the Addiction Research and Treatment Corp. (engaged in drug rehabilitation work) and now as a Division Chief with an organization known as Wildcat Services, which employs methadone patients to perform building maintenance work.

The TA's Impartial Disciplinary Review Board made a finding that Beazer was handling his job at the TA competently at the time of the termination proceedings, while he was participating in the methadone program. Beazer was nevertheless terminated for violation of the TA's rule against narcotic usage.

Beazer's employment in his various positions since leaving the TA appears to have been in all respects satisfactory. Beazer was formerly married but is divorced.

Jose R. Reyes, an Hispanic, is 29 years old. Reyes was employed by the TA in 1968 as a Maintainer's Helper—Group B (Mason), and in 1970 was promoted to Ventilation and Drainage Maintainer. Reyes was dismissed on January 20, 1972, after a medical examination showed evidence of the use of methadone.

Reyes was a heroin user from about 1961 until February 1971, when he enrolled in a methadone maintenance program at St. Claire's Hospital. This program is under the supervision of the Beth Israel Medical Center. The uncontradicted evidence is that Reyes has been a satisfactory participant in the methadone maintenance program. Reyes is still maintained on methadone, although he is in the process of withdrawing.

Following his dismissal from the TA, Reyes was employed in the methadone maintenance program of Mount Sinai Hospital. At present he is a full-time student at Fordham University. Reyes is married and has two children.

Malcolm Frasier, a black, is 31 years old. In February 1971 Frasier applied for a position as a Bus Operator with MABSTOA, but was rejected because his driver's license had been suspended. Frasier applied for the same position again in early 1973. However, in March 1973, when Frasier reported for processing he disclosed that he was a methadone maintenance patient. He was therefore rejected for the position of Bus Operator. Frasier also applied at about this time for the position of Bus Cleaner, but in April 1973 was rejected because of his former methadone use.

Frasier used heroin from about 1968 until his entry into the Mary Scranton Foundation methadone maintenance program in October 1972. He was a successful participant in this program, and terminated the use of methadone in March 1973.

From about 1964 to early 1974 Frasier was employed as a truck driver and a taxicab driver. Since early 1974 Frasier has been a shipping clerk for Baker, Knapp & Tubbs Furniture Co.

Francisco Diaz, an Hispanic, is 40 years old. In 1970 Diaz applied at the TA for the position of Maintainer's Helper—Group D (Sheet Metal). Diaz was rejected when he disclosed that he was a methadone maintenance patient.

Diaz was a heroin user commencing about 1950 until he entered the methadone maintenance program of Beth Israel Medical Center in December 1968. Diaz continues to participate in the methadone program.

Out of the four named plaintiffs, Diaz is the only one about whom any genuine question has been raised regarding his conduct while on the methadone program. Various clinical notes indicate suspicions of illicit narcotics use and alcohol use.

However, Diaz has a long record of stable employment. From 1962 until 1973 he was employed as a sheet metal worker. Since 1973 he has been employed as a helper in a commercial bakery. There is no indication of any deficiency in Diaz's performance in either job. Diaz is married and has a wife and children.

The Class

Basically the class represented by the named plaintiffs consists of all those persons who have been, or would in the future be, subject to dismissal or rejection as to employment by the TA on the ground of present or past participation in methadone maintenance programs.

At one point in the proceedings there was consideration as to whether the class should be expanded to cover former heroin addicts who had become drug-free without the use of methadone. However, it has been agreed by all parties, with the concurrence of the court, that the class should not include this latter group.

Defendants

The TA is a public benefit corporation organized under the laws of the State of New York. The TA operates the subway system of New York City and certain bus lines in the city.

MABSTOA is also a public benefit corporation organized under New York law, and is a subsidiary of the TA. It operates certain bus lines in New York City.

Defendant William J. Ronan was chairman of the TA and MABSTOA from March 1968 until May 1974.

Defendant David Yunich succeeded to the above positions in May 1974.

Defendants William L. Butcher, Lawrence R. Bailey, Harold L. Fisher, Constantine Sidamon-Eristoff, Donald H. Ellito, Edwin G. Michaelian and Mortimer Gleeson, along with defendant Yunich, constitute the total membership of the TA and the directors of MABSTOA.

Defendants Frederic B. Powers and William A. Shea were members of the TA and were directors of MABSTOA at the time this action was originally filed, and were subsequently succeeded by defendants Michaelian and Sidamon-Eristoff.

Defendant Wilbur B. McLaren is Executive Officer in charge of labor relations and personnel for the TA.

Defendant Louis Lanzetta is Medical Director of the TA.

Also joined as defendants are the Civil Service Commission of the City of New York and the Personnel Department of the City of New York; Harry I. Bronstein, Chairman of the Civil Service Commission and Director of the Personnel Department; and David Stadtmauer and James W. Smith, members of the Civil Service Commission.

In the case of all individuals, the amended complaint names also their "successors in office."

Defendants' Policy Regarding Methadone

It is the general policy of the TA that no person using narcotic drugs may be employed. Rule 11(b) of the TA's Rules and Regulations provides:

> "(b) Employees must not use, or have in their possession, narcotics, tranquilizers, drugs of the Amphetamine group or barbiturate derivatives or paraphernalia used to administer narcotics or barbiturate derivatives, except with the written permis-

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sion of the Medical Director—Chief Surgeon of the System."

Methadone is regarded as a narcotic within the meaning of Rule 11(b). It is stipulated that no written permission has ever been given by the Medical Director for the employment of a person using methadone.

The effect of this policy is that, if it is revealed that a current employee of the TA is a user of methadone, he will be discharged, or if an applicant for employment is a user of methadone, he will not be employed. This policy applies to all positions in the TA regardless of whether they are operating or nonoperating positions. Moreover, the policy operates as an absolute exclusion—no consideration being given to individual factors such as recent employment history, successful adherence to a methadone program, or evidence of freedom from heroin use.

The situation is not entirely clear with respect to the policy of the TA regarding persons who have successfully concluded participation in a methadone program. The reason that the policy is not fully crystalized is that the question has not arisen in practice to any appreciable extent. It is clear that a relatively recent methadone user would be subject to the blanket exclusionary policy. However, the TA has indicated that there might be some flexibility with respect to a person who had once used methadone, but had been free of such use for a period of five years or more. But even on this point, there is no official directive indicating that the person would be considered for employment.

The reasons given by the TA as a basis for this policy will be dealt with in detail later in this opinion. They can be summarized now as follows. Methadone maintenance, as a treatment for heroin addiction, has been developed relatively recently. The TA contends that the use of methadone in place of heroin is merely the substitution of one narcotic for another. The TA asserts that methadone maintenance treatment fails to a significant degree in remedying the basic problems of heroin addiction—with the result that a methadone maintenance patient embodies the underlying character defects which caused him to turn to heroin in the first place, and that there is a substantial risk that such a person, while on methadone, will revert to heroin or turn to other drugs or alcohol abuse. The TA contends also that there are significant adverse physiological effects from methadone itself, which would impair the performance of such person as an employee even if he faithfully refrained from heroin or other illicit drugs or alcohol abuse. The TA further contends that its operations involve such serious problems of safety, both with respect to the public and to the employees, that they cannot prudently employ present or past methadone patients. Finally, the TA argues that there is no satisfactory way of screening the reliable methadone patient from the unreliable, so that it is administratively necessary to have a blanket exclusionary policy.

Summary of Conclusions

I have concluded that the blanket exclusionary policy of the TA against methadone maintenance patients is constitutionally invalid. Plaintiffs have more than sustained their burden of proving that there are substantial numbers of persons on methadone maintenance who are as fit for employment as other comparable persons.

No one can have the slightest doubt about the heavy responsibilities of the TA to the public, including their duty respecting the safety of millions of persons who are carried on its subways and buses. However, in my view, the blanket exclusionary policy against persons on methadone maintenance is not rationally related to the safety needs, or any other needs, of the TA.

I have concluded that the policy is the result of a misunderstanding by the TA regarding the nature and effects of methadone maintenance. I do not say this in any spirit of criticism. The in-

formation about methadone maintenance in the public domain is all too fragmentary and confusing. Myths and misconceptions abound. On the other hand, the trial of this case has afforded a unique opportunity to explore in depth the somewhat controversial issues surrounding methadone. A balanced and realistic view of the subject is possible as a result.

I should note that after about six days of trial the parties advised me that they were virtually finished with the presentation of their evidence. However, I was concerned about what appeared to be a disproportionately one-sided array of proof. Plaintiffs had introduced the testimony of an impressive group of experts, corroborated by laboratory and other tests, to the effect that a former heroin addict properly "stabilized" on methadone is free of undesirable narcotic effects and is entirely normal as regards mental and physical capabilities. The evidence demonstrated that methadone maintained persons were successfully employed in jobs of many kinds.

As against this, the TA had brought forward a single expert witness, a pharmacologist, to present theories about certain adverse characteristics of methadone. However, the knowledge and experience of this witness regarding methadone maintenance were so limited that his testimony was of little value. The TA called its personnel director and medical director, who both testified to certain theories they held regarding methadone maintenance. However, these officials naturally lacked the depth of expertise possessed by plaintiffs' witnesses on this subject.

The situation raised a serious question as to whether all sides of the problems involved in the case had been thoroughly explored, or whether any negative aspects of methadone and methadone maintenance programs existed that had not been presented. I therefore requested the attorneys for the parties to submit proposals for further witnesses. The result was an additional nine days of trial at which exhaustive effort was made to probe the relevant questions with experts of varying points of view.

The picture which emerges from all the evidence is basically this. There are some 40,000 persons in New York City on methadone maintenance. It is, at present, the most widely used method for rehabilitating heroin addicts. Among these 40,000 persons on methadone maintenance there is a great variation (as there is in the population as a whole) with regard to characteristics such as educational qualifications, employment skills and background, anti-social behavior, alcohol usage, and abuse of illicit drugs. But the crucial point made so strongly by plaintiffs' witnesses was never convincingly challenged—that methadone as administered in the maintenance programs can successfully erase the physical effects of heroin addiction and permit a former heroin addict to function normally both mentally and physically. It is further proved beyond any real dispute that among the 40,000 persons in New York City on methadone maintenance (as in any comparable group of 40,000 New Yorkers), there are substantial numbers who are free of anti-social behavior and free of the abuse of alcohol or illicit drugs; that such persons are capable of employment and many are indeed employed. It is further clear that the employable can be identified by a prospective employer by essentially the same type of procedures used to identify other persons who would make good and reliable employees. Finally, it has been demonstrated that the TA has ways of monitoring employees after they have been hired, which can be used for persons on methadone maintenance just as they are used for other persons employed by the TA.

This proof applies with equal, if not greater, force to those former heroin addicts who have successfully completed participation in a methadone program.

I have therefore concluded that the present blanket exclusionary policy of the TA against employing, or consider-

ing for employment, any past or present methadone maintained person regardless of his individual merits, is unconstitutional.

Facts

Heroin

It will be important to understand the differences between methadone and heroin.

Heroin is a narcotic which is generally injected into the bloodstream by a needle. It is a central nervous system depressant. The usual effect is to create a "high"—euphoria, drowsiness—for about thirty minutes, which then tapers off over a period of about three or four hours. At the end of this time the heroin user experiences sickness and discomfort known as "withdrawal symptoms." There is intense craving for another shot of heroin, after which the cycle starts over again. A typical addict will inject heroin several times a day.

There are variations in the severity of heroin addiction. For instance, it is possible for a heroin addict to take moderate amounts of the drug—just enough to avoid the withdrawal symptoms, without producing the euphoric highs. Such a person might function somewhat normally. However, this type of controlled heroin addict is very rare.

Methadone

Methadone is a synthetic narcotic and a central nervous system depressant. If injected into the bloodstream with a needle, it can produce basically the same effects as heroin.

Methadone has been used, under medical controls, as a pain killer. Also, methadone is used in "detoxification units" of hospitals to take addicts off of heroin. This is done by switching a heroin addict to methadone and gradually reducing the doses of methadone to zero over a period of about three weeks. The patient thus detoxified is drug free. Moreover, it is hoped that the program of gradually reduced doses of methadone leaves him without the withdrawal symptoms, or the "physical dependence" on a narcotic.

It appears that these detoxification programs, without a follow-up of further treatment are frequently unsuccessful, and that there is a high incidence of reversion to heroin. There are various theories about why this is so. Persons involved in programs such as Phoenix House and Odyssey House take the view that the reason that "physical" detoxification is not enough is because the underlying causes of heroin addiction are psychological problems and problems of life-style, which must be addressed in an appropriate manner.

On the other hand, there is a body of opinion which holds that, in addition to psychological and life-style problems, there are some physical problems from heroin addiction which persist after any short-run detoxification. This theory is that there is a physical discomfort or a physical dependence, which requires treatment. The major treatment method thus far devised is maintenance on stable doses of methadone. Such methadone maintenance is feasible because of the following characteristics of methadone.

We are dealing here with methadone taken orally. When taken orally, methadone is radically different from heroin. Whereas heroin moves rapidly in and out of the bloodstream causing violent highs and lows, oral methadone passes into the body tissues, and then is fed into the bloodstream gradually over a period of twenty-four hours or more. There is a relatively constant or stable level of methadone in the blood during this time. When a person is first on oral methadone he may experience narcotic effect in some degree—such as euphoria, and drowsiness. But it has been found that the body will become tolerant to oral methadone rather quickly, and that after this tolerance is achieved, any narcotic effect ceases. The evidence is that a person who has attained this tolerance can take a constant dose of methadone once a day and has neither the eu-

phoric effects nor the withdrawal symptoms associated with heroin.

The question arises as to what purpose there is in taking methadone if no euphoria or pleasurable effects are obtained. According to the expert evidence, the purpose is two-fold: *First*, methadone produces what is called a "blockade" or "cross-tolerance," which prevents a methadone user from experiencing any "high" from injecting heroin. It should be noted that this cross-tolerance does not apply when the methadone user attempts to use substances other than heroin—such as cocaine, barbiturates, amphetamines, or alcohol. *Second*, experience indicates that former heroin addicts may have some symptoms of discomfort or drug dependence for a fairly long period of time after discontinuing the use of heroin. The nature of these symptoms obviously varies to some extent from individual to individual. The precise cause of such symptoms is a matter of some debate—as to whether the cause is physical or psychological or a combination of both. These matters do not require a detailed exploration in this opinion. The evidence convinces me that the symptoms we are talking about are what would generally be considered medical or physical symptoms. Clearly they are not, in and of themselves, mental or psychiatric deficiencies or disorders. In any event, the uncontradicted evidence is that these symptoms are cured by stable dosage of methadone.

Origin of Methadone Maintenance Programs

It is well known that methadone maintenance, as a treatment for heroin addiction, originated with Dr. Vincent Dole and his wife, Dr. Marie Nyswander, at Rockefeller University. Dr. Dole testified in this case.

In 1963 Dr. Dole became Chairman of the New York City Health Department's Health Research Committee on narcotics, and entered into an intense research activity regarding narcotics. One of his projects was to determine if narcotics addicts could be stabilized on medically controlled doses of drugs. In other words, could the radical highs and lows be eliminated by some constant dosage of a drug? He found that this was impossible with short-acting injectible drugs such as heroin and morphine. However, the results were radically different when he tried oral methadone. Drs. Dole and Nyswander found through their experiments that heroin addicts could become stabilized on constant doses of methadone with the results described earlier in this opinion.

A demonstration methadone maintenance program was set up at the Beth Israel Medical Center. Twelve patients were admitted in the first group and by 1965 about 200 patients were being treated. At this time Dr. Harold R. Trigg, who was head of the Narcotics Detoxification Service at Beth Israel, became interested in the methadone maintenance project. Dr. Trigg later became, and still is, Chief of the Methadone Maintenance Program of the Beth Israel Medical Center. At the present time Beth Israel treats about 6500 persons on methadone maintenance in 35 separate clinics. Dr. Trigg testified in this case.

As indicated earlier in this opinion, there is substantial agreement that many persons attempting to overcome heroin addiction have psychological or life-style problems which reach beyond what can be cured by the physical taking of doses of methadone. Dr. Dole and his associates were acutely aware of this. Consequently the pattern which was developed in the Beth Israel program and in methadone maintenance programs subsequently established was to provide a variety of services including counseling, medical and psychiatric care, educational and vocational guidance, and recreational facilities. Certain minimum standards with respect to these services are set forth by both federal and state regulations.

Current Methadone Maintenance Programs

Today there are approximately 75,000 persons under methadone maintenance treatment in the United States, of which about 40,000 are in New York City.

The methadone maintenance programs are of two basic types. The first type is referred to as "public" or "semi-public." These programs are non-profit. The second type is referred to as "private." These programs are operated for profit.

The five major public or semi-public methadone maintenance programs in New York City are:

(1) The Beth Israel program, referred to above, with 35 clinics treating 7100 patients; [1]

(2) A program administered by the City of New York with 39 clinics treating 12,400 patients (hereafter referred to as "the City program");

(3) A program administered by the Bronx State Hospital and the Albert Einstein College of Medicine, with 7 clinics treating about 2400 patients;

(4) A program operated by the Addiction Research and Treatment Center (ARTC) with 6 clinics treating about 1200 patients; and

(5) A program operated by the New York State Drug Abuse Control Commission (DACC), with 8 clinics treating about 1100 patients.

The total number of patients treated in public or semi-public programs is about 26,000. It appears that these programs are financed almost entirely by federal, state and city funds.

There are about 25 private programs in New York City treating a total of about 14,000 patients.

All methadone maintenance programs throughout the United States are required to comply with regulations of the Food and Drug Administration, promulgated December 15, 1972, 21 C.F.R. § 130 *et seq.* Programs in New York State are required to comply, in addition, with the somewhat more stringent regulations of the New York Drug Abuse Control Commission, promulgated in May 1974, 14 N.Y.C.R.R., Part 2021.

Compliance with these regulations is monitored by the DACC, which acts on behalf of the state and also on behalf of the federal government by contract.

Both the federal and state regulations set forth requirements for the types of persons who can be admitted to the program, the kinds of services which must be rendered, the staffing of the programs, the days and hours of operation and record keeping, controls on the administration of methadone, and tests for illicit drug usage.

A number of the clinics under the aegis of both the Beth Israel and the City programs are located in hospitals not operated either by the City or by Beth Israel. These arrangements are pursuant to contract. The standards for the clinics are set by Beth Israel and the City. The hospitals provide facilities and assist in various ways such as consultation in the hiring of personnel. Fourteen of the Beth Israel clinics and 36 of the City clinics are operated in this way. Among the hospitals where City methadone maintenance clinics are located are New York Hospital, Knickerbocker Hospital, Harlem Hospital, Bellevue Hospital, Elmhurst Hospital and Beekman Downtown Hospital.

The Course of Methadone Maintenance Treatment

In order to become enrolled in a methadone program, a person is supposed to have been a heroin addict for at least two years. In other words, the sole purpose of these programs is for the cure of heroin addiction.

1. The figures given in this section are from the testimony of Dr. Frances Gearing, of the Columbia University School of Public Health. These figures are as of December 31, 1974.

When an applicant is accepted for a program, the first step is to have him detoxified from heroin and from any other illicit drug abuse or alcohol abuse. For this purpose a short period of in-patient treatment at a hospital is usually required.

In connection with this process, a stable or constant dosage of methadone is worked out to be administered to the patient over a protracted period of time. Among methadone maintenance programs there are basically two theories regarding maintenance on stable doses. There are what are termed "high dose" programs, where the dosage is in the range of 80–100 milligrams per dose. Beth Israel is a high dose program. The philosophy of such programs is to give the patient sufficient methadone to make sure that any physical dependence or craving for heroin will be eliminated and to make sure that the blockade or cross-tolerance against heroin is effective. The proponants of such programs further believe that there should be no pressure upon methadone patients to discontinue methadone; that there is nothing intrinsically wrong or harmful about the usage of methadone over an indefinite period of time; that such usage is essentially medicinal; and that the sole criterion which should be used to determine whether or not the patient should be on methadone is his ability to function properly in society.

The "low dose" programs have a somewhat different philosophy. Their proponents believe that the proper goal for a methadone maintenance program should be to have the patient on the program as short a time as possible, that the proper goal of a methadone maintenance program should be detoxification, not only from heroin, but also from methadone. They believe that detoxification from low doses of methadone is easier than from high doses, and thus favor the low doses. Addiction Research and Treatment Corp., which has clinics in Brooklyn and Harlem, conducts a low dose program.

However, except for the differences noted above, the basic functioning of the high dose and low dose programs is similar. After detoxification from illicit drug abuse, the patient commences taking constant doses of methadone each day. Under federal and state regulations, a patient is required to appear at the clinic and take his dosage of methadone in the presence of a staff member at least six days a week for the first three months. The seventh day's dose may be taken at home. After a certain period of time, if the patient's conduct is satisfactory, he may be permitted to reduce his attendance at the clinic and take more of his daily doses at home. However, even after two years of participation in a program, the patient is required to make a minimum of two visits to the clinic each week.

The patient must participate in counseling—at first on a daily basis, and less frequently as time goes on.

The patient must be observed in various ways to determine whether he is abusing drugs or alcohol. It appears that methadone patients, at least in the first stages of treatment, sometimes attempt to return to heroin. But the uncontradicted evidence is that the blockade or cross-tolerance is indeed effective, and that persons on methadone are no longer able to find satisfaction in heroin; and then generally stop trying. However, for one reason or another, such as a possible lapse in methadone dosage, a patient might occasionally revert to heroin in a serious fashion. In any event, urine tests for heroin usage are required by federal and state regulations to be administered at least once a week.

The evidence further shows that, by the use of a somewhat different chemical analysis, a urine test will reveal other drugs such as barbiturates, and amphetamines, although detection of cocaine is difficult. Federal regulations require urine tests once a month for evidence of drugs other than heroin. It further appears that clinics such as Beth

Israel take steps to make sure that their patients are frequently observed to determine whether there is any drug abuse revealed by behavior or appearance. These clinics also watch closely for signs of excess drinking.

These clinics also take precautions against abuse of methadone. One problem is the possibility that a patient may take excessive quantities of methadone, over and above the dose prescribed by the clinic. It is conceivable that he might do this by obtaining methadone on the black market, or by taking two or three days' doses at one time where the clinic has given him methadone to be administered outside the clinic. A different type of problem is the possibility that a methadone patient might sell his methadone outside the clinic, instead of taking it himself.

Various precautions are taken to guard against either type of abuse—including strict control of the issuance of methadone doses, observations of the behavior of the patients, and observation of any signs of manipulation (*i. e.*, stories by the patient of losing his methadone, etc.).

It appears that during the first few months that a patient is on a methadone maintenance program, it will become reasonably apparent whether he is genuinely determined to rid himself of illicit drug usage and is conducting himself accordingly. There is a certain proportion of methadone maintenance patients who do *not* thus conform—who are showing evidence of illicit drug use or excessive drinking, who make little or no attempt at rehabilitation, who loiter or otherwise engage in undesirable conduct. These are what those experienced in the field call the "visible" cases. Many of them drop out of the programs within the first few months or the first year. Many of them are discharged. In some cases such patients are kept on in the hope of improvement. But their situation is evident to clinic personnel. As far as employment is concerned, the evidence indicates convincingly that the clinic personnel are not likely to refer or recommend such persons.

For patients who do perform satisfactorily on the program, treatment will generally continue a year or more. The longest term of methadone maintenance treatment revealed in the record in the present case is four years. Often, however, the patient reaches a point where he desires to terminate his usage of methadone. He believes that he can do without it, and wishes to avoid the trouble of frequent appearances at the clinic. In such a case, the dosage of methadone is reduced to zero over a period of time. Many patients, after terminating usage of methadone, function normally without it. Some find that they return to methadone maintenance.

Physical Effects of Methadone

Two basic questions arise with respect to the employability of methadone maintenance patients. The first is whether methadone maintenance patients will have any narcotic effects or other side effects related to the usage of methadone. The second is whether the patient will return to heroin, or will abuse other illicit drugs or alcohol. Both of these questions have been referred to in earlier portions of this opinion. However, they merit further discussion.

As an initial proposition, one might assume that methadone, being a narcotic and a central nervous system depressant such as heroin, must inevitably produce narcotic effects such as euphoria, drowsiness, inattention, departure from reality, and slowing of reactions.

The TA's expert witness, Dr. Vincent Lynch, a pharmacologist, testified that methadone "undoubtedly" occupies parts of the brain which would affect "cognitive faculties, the ability to respond voluntarily in certain situations." Dr. Lynch also testified that even in a person who has been maintained on a stable dose of methadone for a period of time, the person's functions would be inhibited for a short period of time each day

after taking his dose of methadone. Dr. Lynch disputed the idea that a methadone patient could really be "stabilized" on a constant dose. His opinion was that a tolerance would be attained which would make methadone ineffective to prevent the discomfort or physical dependence causing the heroin craving.

Considering Dr. Lynch's testimony in the light of the evidence as a whole, I find Dr. Lynch's testimony to be too speculative to be of much value. For instance, Dr. Lynch's methadone "tolerance" theory was not based on any tests with human beings, and appears to ignore the marked differences between methadone and other drugs such as heroin.

The overwhelming weight of the evidence is to the effect that a methadone maintenance patient can perform normally, and that undesirable side effects are lacking.

It appears that during the twelve years that have elapsed since the initial investigations of methadone maintenance, there has been a remarkably intensive effort to test and observe methadone maintenance patients and to gather statistics about their performance. Dr. Robert DuPont, Jr., Director of the Special Action Office of Drug Abuse Prevention in The White House, and Director of the National Institute on Drug Abuse in the Department of Health, Education and Welfare, testified that there had been a "vast array of tests" regarding the ability to drive vehicles, ability to maneuver the hands, reaction to signals, sleep patterns, sexuality, and that the evidence is "that the person who is maintained on methadone performs within the normal range of expectation of a normal population."

The detailed results of a number of such tests were introduced into evidence in this action, and indicated normal behavior by methadone maintenance patients.

Dr. Vincent Dole testified regarding his many years of observation of persons stabilized on methadone, and stated:

> "Q. Doctor, has your physiological research or that of your colleagues indicated that there is any disruption of the cognitive faculties when a person is maintained on methadone?
>
> "A. No. On the contrary, we have much data by now that the cognitive and other emotional and intellectual faculties of the mind are normal. We have done the type of tests that you already probably had reported through Dr. Gordon's laboratory on specific things such as IQ measurements and various other perceptual tasks. What probably is more important to this point is now a very large record with some tens of thousands of patients who have gone to school and had high grades, who have accomplished much in responsible jobs, in business and elsewhere."

Regarding the possibility of a methadone maintenance patient obtaining heroin-type euphoria, Dr. Dole testified that many patients have come into methadone treatment centers "on the mistaken theory that they were going to get a free ride and a free euphoria for a long time" and that such patients have very soon discovered "that they do not get euphoria."

Dr. Paul Cushman, Jr., Director of the Methadone Maintenance Clinic of St. Luke's Hospital (a clinic operated under the direction of the Beth Israel Medical Center) testified that he had seen thousands of methadone maintenance patients and that they are basically "indistinguishable" from "comparable non-drug people." Dr. Cushman testified that as to characteristics such as alertness, ability to handle challenges, ability to perform work such as electrical circuit work, welding, mechanical repairs, and so forth—there is "no difference be-

tween a normal subject and the methadone maintained patient after he has been stabilized on his methadone."

Dr. Irving Lukoff, of the Addiction Research and Treatment Corporation, has been performing research for some years with respect to the results of methadone maintenance. Dr. Lukoff contributed much of the factual material for an article entitled "Methadone, The Forlorn Hope" by Edward J. Epstein in the Summer 1974 issue of The Public Interest. This article raised a number of questions about methadone maintenance, including the problem that many persons who commence maintenance programs drop out or are discharged.[2] For purposes of the present case, the important point is that persons who remain in a methadone maintenance program for a substantial period of time are the result of a "self-cleansing" process which goes on in the program, according to Dr. Lukoff. Dr. Lukoff testified that he has seen hundreds of patients maintained on methadone who function normally in terms of all obvious signs, and that they are "functioning the way everybody else does."

Dr. Seymour Joseph, Deputy Commissioner of the New York State Drug Abuse Control Commission, testified that when a person is stabilized on methadone there are no deficiencies in day-to-day conduct such as ability to think and perform required functions.

Dr. Joyce Lowinson, who was responsible for the first methadone maintenance unit under Dr. Vincent Dole, and since 1968 has been in charge of the methadone maintenance program at Bronx State Hospital, testified that participants who are stabilized on methadone function normally, and that there is "no way of distinguishing a person on methadone from a person who is not on methadone" except by means of a urine or blood test revealing the presence of the substance. In contrast to Dr. Lynch's testimony that a person stabilized on methadone will feel a narcotic effect for a period of time immediately after taking his daily dose, Dr. Lowinson testified that such a person, when he takes the daily dose of methadone, "is in no way changed, and is no different after he has taken his medication." Dr. Lowinson contrasted the taking of the dose of methadone with what results from the injection of heroin, where there is the immediate "rush" or "high."

There was also considerable evidence on the question of whether methadone maintenance produces undesirable "side effects." The evidence is that, during the time patients are being brought up to their constant dosage of methadone (a period of about six weeks), there may be complaints of drowsiness, insomnia, excess sweating, constipation, and perhaps some other symptoms. After the patient is stabilized, he becomes tolerant to methadone and the side effects diminish and largely disappear. However, some side effects may persist. For instance, in a group of methadone maintenance patients studied by Dr. Mary Kreek of Rockefeller University, 48% were experiencing excessive sweating; 17% had constipation; 16% had insom-

2. Methadone maintenance has received both criticism and commendation in articles, books —and an occasional television item. The Epstein article questions certain of the medical theories espoused by Dr. Dole and his associates and questions certain statistics sometimes used to show the favorable results of methadone maintenance. For instance, the Epstein article cites certain "evidence" and authorities against the "blockade" theory of methadone.
Of course, my findings and conclusions in the present case must rest on the testimony and other evidence introduced in the case, rather than on the views of authors expressed in articles, where these authors would not be subject to cross-examination about the extent of their knowledge, etc. But I would note a statement quoted with approval in the Epstein article by Dr. Avram Goldstein, director of the Addiction Research Laboratory at Stanford:
"Nothing I have said should be interpreted as 'debunking' methadone or derogating its importance. It is a fantastically effective tool for bringing addicts into a new and helpful kind of therapeutic environment."

nia; 22% had some libido problem. However, the evidence is clear that these conditions do not particularly differentiate this group from other parts of the population. Moreover, except in rare cases, such conditions have no effect upon employability. For instance, the constipation problems could be cured by a common laxative.

The TA referred at the trial to a "package insert" which is required by FDA regulations to be included with methadone sold to physicians, hospitals, and clinics. The package insert contains a description of various matters, including warnings about possible side effects. The package insert states in part:

> "*Use in Ambulatory Patients*—Methadone may impair the mental and/or physical abilities required for the performance of potentially hazardous tasks, such as driving a car or operating machinery. The patient should be cautioned accordingly.
>
> "Methadone, like other narcotics, may produce orthostatic hypotension in ambulatory patients."

There was extensive inquiry at the trial about the significance of this warning, justifying in my view, the following findings: Warnings in package inserts such as this one tend to include every *possible* adverse effect that might occur under *any* circumstances of usage. Although the side effects referred to in this warning might occur where methadone is being used as a pain killer or for some similar purpose, such effects do not occur in a person stabilized on a constant dose of methadone.

To summarize my conclusions on this subject, I find that a person maintained on a constant dose of methadone can perform normally by every standard that relates to employability, and that, except in rare cases, there are no side effects making such a person incapable of being employed. These, of course, are propositions which plaintiffs have consistently espoused. They have been tested in every way that the participants of this trial could think to test them. The overwhelming weight of the evidence is in their support.

Illicit Drug and Alcohol Abuse

A prospective employer of a methadone maintenance patient would naturally question the chances that such a person would revert to heroin, or use other illicit drugs. One aspect of the problem is the possibility that the methadone maintenance patient, unable to find further satisfaction in heroin, might substitute other drugs or alcohol.

The TA contends that these are risks of large proportions among methadone maintenance patients. The TA relies on a study performed by Chambers and Taylor in 1970 to the effect that, in a group of methadone patients in Philadelphia who had been under treatment for at least 24 months, 97.6% of them were found to use an illicit drug at least once during a one-month period. The TA relies on the testimony of Dr. Mitchell S. Rosenthal, director of Phoenix House, which operates a "drug free" program for the treatment of narcotic addicts—*i. e.*, no methadone or other drug is used following the initial detoxification. In the opinion of Dr. Rosenthal, "cheating" by methadone maintenance patients with illicit drugs had been shown by studies to be in the magnitude of 70%. The only specific study Dr. Rosenthal was able to refer to was the one by Chambers and Taylor.

On the other hand, Dr. Rosenthal testified that a patient in a methadone maintenance clinic is monitored so that his use or non-use of drugs can be detected by an employer in a way that does not exist for other employees who might be abusing drugs.

Plaintiffs presented evidence that the conditions under which the Chambers and Taylor study was performed bore no resemblance to the conditions that exist today in a properly conducted methadone maintenance program. Moreover, plaintiffs presented statistics and estimates indicating that the use of illicit drugs among methadone mainte-

nance patients involves a relatively small, and generally visible, minority.

Before going into plaintiffs' evidence on this point, certain observations are necessary. Although fairly detailed information was presented about the major public methadone maintenance programs, very little specific information was provided regarding the private clinics. Obviously, neither side wished to prolong the case to the extent of subpoenaing witnesses from all, or even some, of the 25 private clinics in New York City. There was general testimony to the effect that the private clinics might tend not to be as well run as the public programs. There was also testimony indicating that the quality and performance of the patients in private clinics might be worse than that of patients in the public programs, although the director of one of the public programs, ARTC, testified that ARTC draws from the hardest of the hard core addicts. The information about the private clinics is not really sufficient to permit a conclusion that statistics about matters such as drug abuse would be either better or worse for the private clinics than for the public programs.

In any event, since the public programs treat about 26,000 out of the 40,000 methadone patients in New York City, statistics and other information drawn from these public clinics cover the majority of methadone maintenance patients in New York City, and will be relied upon with this in view.

The public clinics appear to be conscientious in accumulating information about drug abuse. They also note instances of problem drinking. In the case of drugs, this information comes from the periodic urine tests. With regard to drinking, it appears that the program personnel are trained to be sensitive to signs of such a problem.

The witnesses in this case basically agreed that methadone maintenance patients will sometimes attempt to "challenge" their methadone—*i. e.*, attempt some usage of heroin. This usually happens during the first weeks on a program, although it can also happen later. Plaintiffs' witnesses were emphatic in their view that these attempts by a person stabilized on methadone to return to heroin fail because of the blockade or cross-tolerance effect. For instance, Dr. Beny J. Primm, Executive Director of ARTC testified:

> ". . . a patient who is on methadone would have no reason whatsoever, once stabilized, to again shoot heroin. I want that absolutely clear. It is just pharmacologically impossible for him to realize any feelings from the heroin because of the cross tolerance of methadone and heroin."

However, this blockade or cross tolerance effect does not relate to drugs other than heroin, or to alcohol.

Dr. Trigg of Beth Israel testified that about 5,000 out of the 6,500–7,000 patients in his clinics have been on methadone maintenance for a year or more. He further testified that 75% of this 5,000 are free from illicit drug use.

Dr. Bihari of the City's methadone maintenance program testified that, for patients who have been in that program more than six months only 4% have signs of heroin usage in urine tests, and 11% have signs of other drugs. Dr. Bihari testified that 6% of the City's patients have alcohol problems.

Dr. Lowinson of the Bronx State Hospital program stated that, for patients who have been in that program six months or more, 6–7% show some evidence of heroin usage in urine tests, and another 12% show evidence of usage of barbiturates or other sedative or hypnotic drugs. Dr. Lowinson testified that 5% of the patients have alcohol problems.

Dr. Primm of ARTC testified that, among his program's patients who have been in treatment a year or more, 60–70% are adjusted sufficiently that they are free from any drug or alcohol problem. Dr. Primm testified that his program's patients are drawn from the "hardest of the hard core" addicts.

Dr. Kreek testified about a study relating to 129 of the first patients in methadone maintenance programs. At the time of the study these patients had been in programs from three to about five years. There was evidence of continued intermittent heroin abuse in the case of 2 out of the 129. There was evidence of intermittent use of other drugs in the case of 6 out of the 129, but these other drugs included barbiturates and valium. Dr. Kreek noted that valium is the second most frequently used drug by the general population—second only to aspirin. There was no indication of any cocaine use among the 129.

I conclude from all the evidence that the strong majority of methadone maintained persons are successful, at least after the initial period of adjustment, in keeping themselves free of the use of heroin, other illicit drugs, and problem drinking.

Employment

There is impressive evidence about successful employment among methadone maintenance patients. Seventy percent of the Beth Israel patients who have been in the program for a "period of time" are employed. Sixty percent of those who have been in the Bronx State Hospital program over a year are employed. In the City program, 45% are employed in paying jobs, 11% are homemakers, and 6% are full-time students. Dr. Primm of ARTC, testified that 35% of his program's total population (including those in the methadone program and those in a drug free program) are employed. The percentage is greater for the methadone program alone. In the DACC program, 80% are employed.

A statistical study by Dr. Frances Gearing of the Columbia University School of Public Health shows that for four groups of patients studied, the percentage occupied in gainful employment, homemaking, or school attendance after one year were 59%, 63%, 41% and 34% respectively.

Consolidated Edison hires methadone maintenance patients. The policy of Consolidated Edison is to consider for employment a former heroin addict who has performed satisfactorily on a methadone maintenance program for a minimum of one year. Con Ed has hired about 100 former addicts under this policy. Such employees have satisfactorily occupied a variety of positions at Con Ed including monitoring various types of controls, and work on street crews. Con Ed advances such employees along normal promotional lines in accordance with their performance and skills, the sole exception being that former addicts are excluded from any nuclear facility in accordance with Con Ed's understanding of the law. Con Ed believes that its experience with former addicts participating in rehabilitation programs has been successful. A special study of the work of 13 Beth Israel patients at Con Ed indicates that their performance was as good or better than that of the average Con Ed employee.

The evidence further indicates that methadone maintenance patients have been satisfactorily employed as sheet metal workers, truck drivers, taxi drivers, drill press operators, teachers, electricians, mechanics, draftsmen, clerks, cashiers, bank tellers, and a great variety of other positions. Local employers who are now hiring methadone maintenance patients at least on a trial basis are Chemical Bank, New York Life, Metropolitan Life, J. C. Penney, McGraw-Hill, Seagram, Columbia Presbyterian Hospital, New York Telephone Company, New York Off-Track Betting Corporation, and others. An official of the Sheetmetal Workers International Association testified that his organization is bringing methadone maintenance patients into its apprenticeship program, and that they are performing work such as welding, using heavy machinery, and working on scaffolding.

Dr. Joseph testified that there is a large segment of methadone mainte-

nance patients who become "non-visible", in that they are performing well and are free of serious problems. With regard to employment, he testified:

> "We have people in methadone maintenance programs who are performing any and every type of service in this city and state, ranging from being outstanding members of the professions to laborers, going through the gamut of electricians—you name it."

According to Dr. Joseph there are thousands of such persons.

Classification of Persons on Methadone Maintenance

There is certain other information in the record which helps give perspective on the question of employability of persons on methadone maintenance.

The witnesses from the Beth Israel program testified that about one-third of the patients in that program, after a short period of adjustment, need very little more than the doses of methadone. The persons in this category are situated fairly satisfactorily with respect to matters such as family ties, education and jobs. Another one-third of the patients at Beth Israel need a moderate amount of rehabilitation service, including vocational assistance, for a period of several months or about a year. A person in this category may, for instance, have finished high school, but may have a long heroin history and no employment record. A final one-third of the patients at Beth Israel need intensive supportive services, are performing in the program marginally, and either will be discharged or will be on the brink of discharge.

Dr. Harvey Gollance estimated that about 20% of Beth Israel's patients drop out of the program. At the Bronx State Hospital 10% of the patients are discharged during the first year.

Dr. Lukoff from ARTC described it this way. He stated that about one-third of ARTC's patients are "stereotype" addicts, who have started on heroin in their teens, and have had severe problems with family ties, education and crime. The other two-thirds of the ARTC patients are persons who started on heroin in their 20's, who tend to have finished school or military service, and who have maintained better situations with respect to family ties and employment. About 40–45% of the first third drop out in the first year of treatment. About 75–80% of the other two-thirds remain in the program.

The evidence indicates that problem patients—those who are abusing drugs or alcohol and who are not making progress in rehabilitation—are identifiable after about 3–6 months, if not sooner.

On the question of employability—many methadone patients (about 30% in the case of Beth Israel and Bronx State) are employed when they enter the programs. Others are employed within a matter of weeks. In many cases, however, the clinic personnel feel that they should wait 6–9 months or even a year before making a recommendation for employment.

Identification of Those Employable

As a result of the evidence at the trial, there can be no real dispute about the fact that substantial numbers of methadone maintenance patients are capable of successful employment. The question remains as to how a prospective employer can identify those who will perform satisfactorily, and screen out those who are still abusing drugs or have other undesirable characteristics. There was intensive inquiry on this question at the trial.

My conclusion is that an employer such as the TA can perform this screening for methadone maintenance patients in basically the same way as in the case of other prospective employees.

The TA, like any large employer, has staff and facilities for ascertaining the mental and physical qualifications of prospective employees. The TA also has various systems for monitoring the performance of employees after they are hired. In cases where particular infor-

mation must be obtained, the TA will consult with physicians, psychiatrists, hospitals, and other sources.

The TA must always make the best determination it can as to whether the applicant will have proper work habits, and whether there is a risk of undesirable conduct such as thievery, drunkenness or narcotic usage. The TA, like any employer, does not rely on hunch, but obtains *objective evidence—i. e.*, information about performance at school, employment history, current employment record, family ties, medical or psychiatric history, criminal record, and so forth.

In this connection, it is important to note that the TA has no blanket prohibition against the hiring of persons with criminal records. Individual consideration is given to the nature of the crime, and to the question of how it might relate to the job applied for. For instance, a record of theft would be considered against a person applying to handle money. The prior criminal record would be considered in the context of recent job stability and evidence of rehabilitation.

The TA has no blanket prohibition against the employment of persons taking drugs such as tranquilizers. When evidence of such usage appears, the TA believes it should "dig a little deeper" to find out about the circumstances. Inquiry may be made with the person's doctor. Consideration is given on an individual basis.

The TA has no absolute prohibition against the employment of persons formerly confined to a mental institution or persons who have been, or are currently being, treated by a psychiatrist. The TA has psychiatrists on retainer to act as consultants where problems such as this arise. But again, the matter of employability is considered on an individual basis.

The TA does not maintain any blanket rule barring the hiring of persons with such medical problems as diabetes, epilepsy or heart disease. Individual consideration is given to applicants having these conditions. It is the policy of the TA to consider the hiring of such persons on an individual basis in light of such factors as their actual performance capabilities and the safety sensitivity of the job to which they seek appointment.

I return to the matter of objective evidence of employability, considered with respect to methadone maintenance patients. A crucial point here is that the record in this case demonstrates that there are large numbers of methadone maintenance patients who are able to provide to a prospective employer satisfactory objective evidence of employability. For instance, many methadone maintained persons can demonstrate that they have been on a reliable methadone program for a year or more; that they have faithfully abided by the rules of the program; that, according to systematic tests and observations, they have been free of any illicit drug or alcohol abuse for the entire period of treatment, excluding a possible adjustment period; that they have the necessary education or other training for the job; that they have stable family ties; and that they have a current successful employment record, and a successful work history.

In the background, of course, is the record of heroin addiction. Medical Director Lanzetta of the TA takes the view that when a man goes on heroin there is "some deficiency somewhere", which presumably persists thereafter, particularly while the person needs the "crutch" of methadone maintenance. Although there is no doubt that heroin addiction is a problem of the most severe nature, the presumption that heroin addiction invariably stems from some character defect, making a person more or less permanently unemployable, cannot be supported. The question about whether a person maintained on methadone has some defect or deficiency making him invariably a risky employee has been dealt with in detail heretofore in

this opinion. The evidence is conclusively to the contrary.

The question in the individual case is whether the methadone maintained person, despite the history of heroin addiction, is currently capable of employment. If the TA were being asked to employ a marginal or doubtful case—*i. e.*, a person who had been in a program only a short time and who had no work history or current employment record—the TA might well be justified in giving little or no consideration to such an applicant. But the TA's blanket exclusionary policy applies with equal strength to the many methadone maintained persons who, from any rational standpoint, have objectively demonstrated their capability of being employed by means of evidence of freedom from drug abuse and employment record. Moreover, the TA's policy applies not only to what are obviously its most sensitive positions—such as subway motormen, subway towermen, bus drivers—but applies to all jobs in the TA, such as clerks and car cleaners. The TA refuses to consider a methadone maintained person for employment, regardless of the evidence he presents about employability and regardless of what type of job he seeks at the TA.

I have referred a number of times to evidence of freedom from drug or alcohol abuse. The obvious source of such information is the methadone maintenance program.

In connection with obtaining information from methadone maintenance clinics, the TA makes two points: First, that some of the clinics—particularly the private ones—may not provide reliable information; and second, that the clinics may be legally prevented from giving full information to an employer regarding a patient. Neither point is of weight in the present case.

It is true that several of the witnesses indicated that there might be private clinics which could not be relied upon for accurate information about drug and alcohol abuse. Also, one of the witnesses from a "drug free" program expressed skepticism about the ability of one of the public programs—the City program—to consistently provide reliable information. On the latter point, the current director of the City program was thoroughly interrogated in this case, and the weight of the evidence is that the City program is soundly managed and reliable within the bounds of normal human fallibility. In any event, the TA has never *tried* to obtain information from even those clinics such as Beth Israel which are unanimously agreed to be reliable. Employers such as Consolidated Edison have found that they can obtain satisfactory information about methadone maintenance patients in order to make intelligent employment judgments. There is no reason to believe that the TA cannot do the same thing.[3]

With regard to the legal restrictions imposed upon a methadone clinic in the giving out of information about patients, 21 U.S.C. § 1175(a) provides that records of the treatment of any patient in a federally regulated drug abuse prevention function shall be confidential and shall be disclosed only under the circumstances authorized in § 1175(b). Subsections (b)(1) and (g) provide in effect that such records may be disclosed in accordance with the prior written consent of the patient for such purposes as are allowed in regulations issued by the Director of the Special Action Office for Drug Abuse Prevention.

3. There was some suggestion at the trial that it might be necessary or advisable to have a certification board or panel of experts to determine the employability of former addicts. But the weight of the evidence supports the proposition that an employer such as the TA can make this determination by its normal screening procedures. In the case of methadone maintained persons, the employer would naturally seek information from the program. But this is essentially no different from obtaining relevant references for other types of applicants. If the TA has legitimate doubts about the reliability of the information obtained from the program, it will accord such information little or no weight.

The applicable current regulations were issued June 25, 1975 and became effective on August 1, 1975. 42 C.F.R. §§ 2.1 *et seq.*, 40 Fed.Reg. 27802. Section 2.38 governs disclosure of information to employers. It is clear that under these regulations a methadone maintenance patient may authorize release of information to an employer or prospective employer which is relevant to questions relating to employment.

Persons Having Terminated Methadone Maintenance

The great bulk of the evidence in this case related to the question of the employability of persons engaged in methadone maintenance programs. There was some evidence, although not a great deal, about the characteristics of persons who have successfully *completed* a methadone maintenance program and have withdrawn from methadone.

There are indications that at times these persons will return to the methadone maintenance programs. At times such persons revert to heroin. However, it is unquestioned that there are many methadone maintenance patients who successfully withdraw from methadone and stay clear of drug abuse thereafter. Plaintiff Beazer is such a person, having ceased using methadone almost two years ago.

In any event, it would appear that there would be effective means for objectively determining the qualifications for employment of a former methadone maintenance patient. There is no rational reason for maintaining an absolute bar against the employment of these persons regardless of their individual merits.

Policies of City, State, and Federal Governments

The City of New York, the State of New York and the Federal Government have taken various steps to eliminate bars to public employment of methadone maintenance patients and other former addicts.

On March 22, 1972 the New York City Department of Personnel issued a policy statement approved by various City officials and by the City Civil Service Commission. The policy statement provided that a history of drug addiction shall not in itself constitute a bar to employment in any City position, except that appointments to the "uniformed services" would continue to be governed by "current medical and physical standards." The policy statement provided that where an applicant for City employment has a history of drug addiction, his case will be considered on its individual merits. The policy statement specifically provided that methadone maintenance patients should be assisted in obtaining City jobs.

This policy has had no effect on the TA, for reasons which will be described hereafter.

As to the exception for the "uniformed services," apparently the police, the firemen, and sanitation workers are included in this category. However, the evidence indicates that in fact there is no blanket exclusion of methadone maintenance patients in these departments, at least as to all positions.

The New York State Civil Service Department and Drug Abuse Control Commission have promulgated certain "Operating Principles," providing that if an applicant for State employment has a history of drug abuse, the application should be considered on its merits, although a history of drug abuse may be considered the basis for denial of appointment in "certain sensitive positions" identified by the Civil Service Department. These Operating Principles specifically provide for assistance to methadone maintenance patients seeking State employment.

In 1972 Congress passed the Drug Abuse Office and Treatment Act, which provides in part that "no person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the ground of prior drug abuse." The stat-

ute goes on to state that this provision does not apply to employment in the CIA, the FBI, or other similar agencies. 21 U.S.C. § 1180(c). Although the statute does not expressly so state, it would appear that a person successfully participating in a methadone maintenance program would be within the protection of the statute.

Mechanics of TA's Exclusion Policy

Positions in the TA consist of so-called "city-wide titles" and also titles which are unique to the TA. The city-wide titles are positions such as secretary, clerk, motor vehicle operator, which involve basically the same work in the TA and in City agencies. The TA has 3,400 employees in city-wide titles.

The New York City Civil Service Commission has adopted medical standards for city-wide titles in the TA, and these standards specify that a person who is successfully participating in a recognized methadone maintenance program may be employed. It is conceded that the TA avoids the effect of this rule by invariably passing over any methadone patient when applicants for city-wide title jobs at the TA are chosen from the Civil Service eligibility lists. The TA has the right under Civil Service Law § 61 to choose any one of the top three applicants on the list at the time of a particular selection for a job.

With respect to the employment titles at the TA other than city-wide titles, the TA has its own medical standards which it has written, although they have been formally promulgated by the Civil Service Commission. These standards provide that an applicant may be rejected for a history of drug abuse, and it is clear that the TA uniformly rejects all persons with a history of drug abuse who are participating in methadone maintenance programs.

Positions in the TA

The TA contends that it cannot afford to take what it considers the risks of employing present or past methadone maintained persons, except possibly those who have been successfully withdrawn from methadone for several years. The TA emphasizes that employees such as subway motormen have an immediate and heavy responsibility for the safety of large numbers of persons. The TA argues that many of its employees must work unsupervised throughout the wide geographical area covered by the TA system. Indeed, the TA's officer in charge of personnel, Wilbur McLaren, testified that "most of our people are literally unsupervised." The TA further contends that its jobs are attended by unusual hazards—such as the risk of a maintenance man being hit by a subway in a tunnel.

There can be little doubt about the unique sensitivity involved in jobs such as that of subway motorman. Despite the existence of various automatic safety devices to protect against the consequences of mistakes, the subway motormen and subway towermen (who control certain subway signals) and other similar employees of the TA must be persons of maximum alertness and competence.

One inevitable question raised by the present case is: "Do you want a methadone patient driving a subway train?" One answer to this question is that, under concededly valid rules of the TA, a person cannot become a subway motorman except by promotion from some other position in the TA. This means that a methadone maintained person seeking his first job with the TA *could not apply* to be a motorman. No one can be considered for the position of motorman until he has demonstrated satisfactory job performance *at the TA* in some other position for a period of a year or eighteen months, or more. The same is true for the position of subway towerman. As to subway conductors (who control the opening and closing of subway doors), although technically this title is an "entry level" position, in fact the last two competitions for the position—in 1972 and 1975—were open only to existing TA employees seeking promotion. The position of bus driver is open to

new applicants. In any event, as I will describe later in this opinion, I believe that it would be constitutionally permissible for the TA to refuse to employ present methadone maintained persons as motormen, conductors, towermen, bus drivers, and in similar operating positions.

But the essential point here is that the TA's exclusionary policy against methadone maintained persons is applied *not merely* with respect to the uniquely sensitive jobs such as motorman and other comparable positions, but is applied with respect to *every* category of work within the TA. It is perfectly clear that large numbers of the employees in the TA perform work essentially similar to the type of work done in other businesses and industries where methadone maintained persons appear to be successfully employed.

The TA (including MABSTOA) employs approximately 47,000 persons. It hires about 3000 employees annually. For various purposes, the TA divides its jobs into operating and non-operating positions. The principal operating positions, with the numbers of persons involved are:

Subway Motormen	3,300
Subway Conductors	3,200
Subway Towermen	600
Bus Operators	5,200
	12,300

However, the TA has almost 400 other job titles, largely in the non-operating category. The following are a few examples of non-operating titles, listed with the number of employees involved:

Accountant	25
Assistant Accountant	29
Architect	5
Assistant Architect	33
Junior Architect	5
Civil Engineer	79
Civil Engineer Draftsman	27
Assistant Civil Engineer	207
Junior Civil Engineer	58
Cashier	32
Clerk	378
Senior Clerk	286
Collecting Agent	145
Bookkeeping Machine Operator	49
Claim Examiner	60
Computer Operator	7
Keypunch Operator	57
Messenger	12
Railroad Caretaker	229
Railroad Porter	1162
Railroad Stockman	72
Railroad Stock Assistant	103
Railroad Watchman	162
Stenographer	44
Senior Stenographer	48
Typist	190
Senior Typist	33

There are other non-operating TA employees, which will be described in more detail hereafter.

The TA's contention that most of its employees work basically without supervision is somewhat belied by the large number of supervisory positions listed among the approximately 400 titles of TA employment. For instance, there are 21 kinds of foremen. There are a total of 1413 foremen in these 21 categories. There are 40 categories of employment at the TA bearing the title "Senior" attached to some type of job—such as Senior Computer Operator, Senior Engineer. There are 12 types of "Superintendents" and 29 types of "Supervisors."

Most of the TA non-operating employees are under some direct supervision, or at least report to a foreman or supervisor who determines that the employees are fit for duty.

All TA employees (except perhaps at the very high levels) are on probation for the first six months of their employment. This applies to both new employees and ones who have been promoted from another TA job. During probation there is close scrutiny by a supervisor.

For various purposes the TA considers certain positions as "critical" or safety-sensitive, and other positions as

"non-critical." For instance, periodic physical examinations are given to persons in various critical positions such as subway motormen, subway conductors and bus operators. As will be discussed in more detail hereafter, the TA treats an employee with an alcohol problem differently depending on whether the position is deemed critical or non-critical. Again, the principal critical categories are motormen, conductors and bus operators, although there are non-operating jobs, such as operating cranes and handling high voltage equipment, which are deemed to be critical. A non-critical job is defined by chief personnel officer McLaren, in connection with the alcohol issue, as one where "drinking would not directly relate to passengers' safety or overly expose other employees." The TA will permit a person having enough of a drinking problem to require treatment by the TA's alcoholic counselling service to remain on non-critical jobs. Such jobs include all the so-called "City-wide" titles (3400 persons); car cleaners (950 persons); and apparently a majority of the jobs involved in repairing subways and buses (total 3000 persons), maintaining subway track, structures and tunnels (total 6800 persons), and manning the subway stations (total 5600 persons).

Certain categories of employment bear further discussion. These are: (1) office work; (2) maintenance of subway cars and buses; (3) maintenance of track, structures and tunnels; (4) work in subway stations.

(1) Office Work

The total number of office workers is over 2,000. These include 1200 persons in various clerical and secretarial titles. Most of the office employees work in the two main offices of the TA at 370 Jay Street, Brooklyn, and the World Trade Center in Manhattan. They mainly work a daytime shift and are under normal office-type supervision.

(2) Maintenance of Subway Cars and Buses

There are about 6,600 employees involved in the maintenance of subway cars and buses.

This category includes 950 car cleaners.[4] About half of these do the daily sweeping and picking up of the cars. The other half do the washing and other types of cleaning which occur on certain schedules. The sweeping and picking up are carried out at the two main subway yards at Coney Island and at 207th Street, and at 13 inspection stations. The washing and other cleaning work is carried out in the two main yards.

Most of the car cleaning is done at night. While some car cleaners work alone, generally they work in groups of two or more and are supervised by a foreman.

One of the objections of the TA to hiring methadone maintained persons for car cleaning is that various cleaning agents are used which might be toxic under certain circumstances, and that the effect of these cleaning agents might be "potentiated" by methadone. Dr. Vincent Lynch testified to this. However, Dr. Lynch admitted that the question of whether there might be some harmful effect depended upon the actual conditions of work at the TA, such as the concentration of the substances and the amount of fresh air or ventilation. Dr. Lynch stated that he had tried to find out something about these conditions from the TA, had been unable to do so, and actually knew nothing about the conditions. I therefore can give no

4. Apparently this category includes both cleaners of subway cars and cleaners of buses, since there is no separate category of Bus Cleaner given in the list of employment titles furnished to the court. However, plaintiff Frasier applied for the position of "Bus Cleaner" in 1973. It will be assumed that Bus Cleaners perform essentially the same functions as Car Cleaners.

weight to the claim about "potentiation" of the effects of cleaning agents.[5]

Another category of positions involves repair and parts replacement for subway cars. There are 3,000 TA employees in this category. These employees perform body work, mechanical and electrical work and painting. They work mainly in shops in the daytime, and generally in groups supervised by foremen.

The TA argues that this subway repair work involves unusual hazards because of the need to manipulate heavy machinery and power tools. But the uncontradicted evidence is that methadone maintained persons are performing successfully in comparable industrial jobs.

In any event, plaintiffs are not suggesting that just anyone on methadone be thrown into working with metal benders and boring machines. The person must be *qualified* for the job. For instance, in the case of a Car Maintainer A (Body Work), he would be required under TA regulations to have substantial training and experience in such skills as fabrication of steel assemblies, welding and cutting of heavy gauge metal, forging, and the use of the necessary tools and power equipment. If a present or past methadone maintained person came to the TA and could demonstrate these qualifications, could demonstrate a current satisfactory employment record in this type of work, and could verify his freedom from illicit drugs for a substantial period of time, plaintiffs urge that he deserves to be considered for a job opening on his merits. The evidence supports this proposition.

As to repair of buses, there are about 1000 employees engaged in such work, divided about equally between day and night shifts. The work is mainly done in garages under the supervision of foremen, and is of a somewhat lighter nature than what is involved in the repair of subway cars. However, again there are requirements of extensive training and experience.

As already indicated, the TA deems many of the jobs connected with the repair and maintenance of subways and buses as "non-critical," so that a person with an alcohol problem may be permitted to continue in his job while rehabilitation attempts are being made. Car cleaners are considered non-critical.

(3) Maintenance of Track, Structures and Tunnels

This category of work is referred to by the TA as "maintenance of way." There are about 6800 employees involved. These employees lay and repair track, work on road beds, and also do all the other repair and maintenance work for tunnels, stations and elevated rail structures. They maintain the signals and also the equipment for supplying the power to the subway system. These employees include carpenters, masons, plumbers, electricians and metal workers. Also included are the persons who work on drainage pumps and ventilation fans—the type of work done by plaintiff Reyes.

Obviously, the work of these employees is spread throughout the subway system. However, these employees usually work in groups ranging from two or three to larger gangs. A foreman will supervise a single group, or several small groups, as appropriate.

5. The TA has suggested that the cleaning work at the yards involves substantial danger because cleaners need to walk throughout the yards and might encounter third rails carrying 600 volts of electricity. In connection with this case I was taken on a tour of certain parts of the TA system, which included a visit to the Coney Island yard at night. We started at the outskirts of the yard, and crossed seemingly endless numbers of rails and third rails before we finally approached some car cleaning operations. From later testimony, however, it appears that the car cleaners themselves approach their work far more conveniently. After arriving at the yard by subway or automobile, they walk via a parking lot and sidewalk to the foreman's office in the inspection shop, and then to the cars to be cleaned, usually crossing two or three tracks at most.

Maintenance of Way employees include 1500 trackmen, who work on the rails, ties, plates, ballast and "subgrade." They usually work in gangs of ten men or more under a foreman.

The TA argues that many Maintenance of Way employees are subjected to unique hazards involved in working in tunnels or on elevated structures where trains are passing, and where the third rail must be constantly avoided.

However, here again the TA has set high qualifications for the more sensitive jobs. Positions such as carpenter, mason, signal maintainer, and power distribution maintainer, can only be gained through promotion from helpers or trainees in those categories. A new employee will enter as a helper or trainee, and even the latter are required to have appropriate experience. The helper or trainee will work under close individual supervision for a year or more.

Again, many of the jobs connected with the maintenance of subway track, tunnels and structures are deemed "non-critical," so that a person with an alcohol problem may be permitted to keep working during rehabilitation efforts.

(4) Work in Subway Stations

There are about 5,600 employees involved in this category. They consist mainly of about 4,100 railroad clerks who sell the tokens; about 1,100 railroad porters, who sweep and clean the stations; and about 140 turnstile maintainers, who repair the turnstiles.

These employees work largely alone at the various subway stations throughout the system. However, it is clear that the railroad porter does not occupy a position of unique sensitivity. The TA points out that the railroad clerk and the turnstile maintainer are positions requiring honesty and alertness, and that these employees are sometimes robbed. But the evidence shows that methadone maintained persons are serving as bank tellers, and as cashiers in the Off-Track Betting offices. It is not reasonable to presume that they could *never* qualify for employment as railroad clerks or turnstile maintainers.

Railroad clerks, railroad porters and turnstile maintainers are deemed to be non-critical employees in the application of the policies regarding alcohol.

TA Policy Regarding Alcohol

Some further explanation is necessary regarding the TA's policy about alcohol. The TA's handling of drinking problems is far more lenient than anything suggested in this case regarding methadone maintained persons. Plaintiffs are seeking in this action consideration for employment as to persons whose heroin addiction is *in the past* and who are, at the time they apply to the TA, demonstrably free from drug or alcohol abuse.

Although the TA currently refuses to consider such persons for employment, the TA is willing to continue in employment a substantial number of persons with existing alcohol problems.

A TA employee is subject to discipline if he is found drinking on the job or unfit for duty because of drinking done before he came to work. There was some confusion among the TA witnesses as to exactly what discipline would be imposed. But basically, it appears that, at the time of the first offense, someone in a critical position such as motorman would be moved to a non-critical position such as platform conductor; and a person in a non-critical position would, upon the first offense, be given a three-day suspension and then returned to his job. If the TA believes that the employee has a drinking problem that needs counselling or treatment, he is sent to the TA's Employee Counselling Service, which exists to deal with problem drinkers. He may then be requested to attend Alcoholics Anonymous, or to go to a hospital if necessary. If hospital treatment occurs, an effort is made to have him return to work as soon as possible, because the TA feels "that oc-

cupational therapy at the time is a very essential part of their recovery," according to the testimony of Joseph Warren, Director of the Employee Counselling Service.

There are currently about 2300–2400 TA employees attending the counselling service.

As already indicated, persons having drinking problems sufficient to require extended counselling and treatment with the counselling service are permitted to be employed in a wide variety of jobs at the TA including office work, laying of track, cleaning and repair of subway cars, and so forth.

It is interesting to note that a person with a drinking problem may actually be permitted to function in positions such as subway motorman under certain circumstances. If a motorman realizes he has an alcohol problem and comes to the counselling service, or his family reports to the counselling service, he will undertake counselling and treatment on a confidential basis, according to Mr. Warren. This is treated as "highly classified information." The man's supervisor is not apprised, nor apparently is the man taken off the job, until and unless the supervisor detects some failure of performance.

Conclusions of Law

Applicable Law

[1] There is no basic dispute among the parties as to the constitutional doctrines which apply to the present case. A public entity such as the TA cannot bar persons from employment on the basis of criteria which have no rational relation to the demands of the jobs to be performed. To do so is a violation of both the due process and equal protection clauses of the Fourteenth Amendment. This applies to new applicants for employment, and to existing employees threatened with termination.

Decisions dealing with the basic doctrines are *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974); *Sugarman v. Dougall*, 413 U.S. 634, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973); *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957); *Baker v. Columbus Municipal Separate School District*, 329 F.Supp. 706 (N.D.Miss. 1971), *aff'd*, 462 F.2d 1112 (5th Cir. 1972).

In the *LaFleur* case the Court held invalid under the due process clause certain rules requiring teachers to take extended leaves of absence beginning with the fourth or fifth month of pregnancy. Justice Stewart, writing for the majority, held that such rules have the effect of creating irrebuttable presumptions of physical inadequacy, and that the constitution requires more individualized determination. Justice Powell concurred in the result, although he disagreed with the irrebuttable presumption theory. Justice Powell would permit certain classifications or rules relating to pregnant teachers, provided they were narrower and rationally related to a legitimate employment purpose.

Sugarman v. Dougall, supra, held unconstitutional, as violating the equal protection clause, a provision in the New York Civil Service Law that no person would be eligible for state employment in the "competitive class" if not a United States citizen. Justice Blackmun, writing for the majority, made it clear that the state might, "on the basis of an individualized determination," validly refuse public employment because of noncitizenship in certain types of positions where this factor bore some rational relationship to the demands of the position. However, "a flat ban" on the employment of aliens could not withstand scrutiny under the Fourteenth Amendment.

The Supreme Court's decision in *LaFleur, supra*, was anticipated by the Second Circuit decision in *Green v. Waterford Board of Education*, 473 F.2d 629 (2d Cir. 1973). In this case emphasis

was laid upon the fact that a pregnant teacher was treated differently from persons having other forms of disability. The court stated (473 F.2d at 634–5):

> "Why the Board should choose, by means of an inflexible rule, to manifest particular concern with the health of a pregnant woman, but not, for example, with the health of a teacher (male or female) recuperating from a heart attack is nowhere explained."

Application to the Present Case

[2] Under the above authorities, I hold that the TA's blanket ban against the employment of all present and past methadone maintained persons in *any* position in the TA is a violation of the due process and equal protection clauses of the Fourteenth Amendment.

It is perfectly clear that there are substantial numbers of present or past methadone maintained persons who would be capable of performing many of the jobs at the TA. Individual consideration, or narrower rules rationally related to certain classifications of jobs, are constitutionally required.

The lack of a reasonable basis for the present policy of the TA is particularly evident from the markedly different treatment given to problem drinkers—persons presenting greater risks than those members of the plaintiff class for whom employment is sought. *See Green v. Waterford Board of Education, supra.*

I recognize that there are differences of opinion as to the merits of methadone maintenance as a treatment for heroin addiction. For one thing, there is a conscientious body of opinion strongly objecting on philosophical grounds to the long-term use of one drug to combat the effects of another drug. However, as plaintiffs' experts point out, one might also challenge on philosophical or moral grounds the use of alcohol and the use of other "licit" drugs by large segments of the population. Obviously, the constitutional rights of methadone maintained persons cannot be decided on the basis of these considerations.

[3] I wish to stress certain things *not* compelled by my holding. The TA is not required to hire any present or past methadone maintained person where there is a legitimate reason to question the person's ability or competence—including a legitimate reason to believe that the person is abusing illicit drugs or alcohol. The TA is not required to rely on references from methadone clinics or programs where there is reason to doubt the reliability of such information. The TA is not prevented from making reasonable rules and regulations about methadone maintained persons—such as requiring satisfactory performance in a program for a period of time such as a year, or forbidding methadone maintained persons employment in sensitive categories such as that of subway motorman, subway conductor, subway towerman, bus driver, and jobs dealing with high voltage equipment. As in *Sugarman v. Dougall*, 413 U.S. 634, 93 S.Ct. 2842, 37 L.Ed.2d 853 (1973), the problem is the TA's flat ban, which goes beyond any rational or legitimate needs of the TA, and excludes persons just as qualified for employment as many who are hired by the TA.

[4] One other question to be dealt with at this point relates to the suggestion at the trial that there may be methadone maintained persons who are working for various employers, including the TA, where the employers are unaware of that fact. Surely there is nothing which constitutionally prevents the TA from inquiring of its employees, or applicants for employment, whether they are or were on methadone maintenance programs. Upon such inquiry, the employees or applicants would be obligated to disclose the facts.

Returning to the main issue, I hold that plaintiffs and their class are entitled to relief under the Fourteenth Amendment and under 42 U.S.C. § 1983.

The § 1981 and Title VII Claims

Since I have decided that relief is warranted as described above, I need not

reach the claims of racial discrimination under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

The "City" Defendants

Although plaintiffs have shown a right to relief in this case against the TA, MABSTOA, and their officials who have been sued, there is no showing of any wrongdoing or any need for relief as against the New York City Civil Service Commission or the New York City Personnel Department, or any officials connected with these two entities.

Relief to be Granted

In connection with the relief to be granted, there are two subjects to be covered: First, the relief for the named plaintiffs; second, the relief for the class.

With respect to the named plaintiffs, the basic error committed by the TA was determining these persons' status on the basis of the TA's blanket exclusion of present and past methadone maintained persons. The TA will be directed to re-examine the employability of each of the four named plaintiffs without regard to this invalid policy. The TA will then submit its conclusions to the court. The court will then finally determine whether any of the named plaintiffs should be reinstated or hired, and what rights to back pay there are, if any.

With respect to the class, plaintiffs are directed to submit a proposed permanent injunction based upon the principles announced in this opinion, and the TA defendants are to review and comment upon plaintiffs' proposal.

I have in mind that the injunction cannot provide for the detailed handling of all situations which might arise. Obviously, no one knows at the present juncture exactly who will apply for what job. The injunction should contain certain basic directions and guidelines. Thereafter the court will retain jurisdiction for a period of time to implement the injunction.

Thomas L. X. PENN El.
v.
W. M. RIDDLE, Sup't., etc., et al.
Civ. A. No. 75-0266-R.

United States District Court,
E. D. Virginia,
Richmond Division.
Aug. 5, 1975.

State prisoner sued for claimed civil rights violations. Defendant moved for summary judgment. The District Court, Merhige, J., held that constitutional violations were not shown in actions of adjustment and classification committee, body cavity search, or confinement in isolation and strip cell.

Motion granted.

1. Prisons ⇐4

Record did not establish that actions of prison adjustment and classification committee were arbitrary or capricious.

2. Federal Civil Procedure ⇐2554

Contemporaneous records of prison adjustment and classification committee could be considered on motion for summary judgment in prisoner's civil rights action. 28 U.S.C.A. §§ 1343, 2201, 2202; 42 U.S.C.A. § 1983.

3. Civil Rights ⇐13.4(5)

Prisoner's civil rights claim, based on action of adjustment and classification committee, and supported by fellow inmates' affidavits inculpating different prisoner, appeared without merit where prisoner had made no effort to offer their testimony at hearing before committee.

4. Searches and Seizures ⇐7(14)

Body cavity search of prisoner lies within sound discretion of prison officials and does not of itself violate Fourth Amendment rights. U.S.C.A. Const. Amend. 4.

Permanent Injunction and Judgment dated May 5, 1976

C. Exh #602
#38

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER, et al., Plaintiffs,	:	
-against-	:	72 Civ. 5307 (T.P.G.)
NEW YORK CITY TRANSIT AUTHORITY, et al., Defendants.	:	PERMANENT INJUNCTION AND JUDGMENT

PERMANENT INJUNCTION

WHEREAS on December 15, 1972 plaintiffs commenced the above-entitled action alleging that employment practices maintained by defendants discriminated against plaintiffs and their class in violation of the Constitution of the United States and of 42 U.S.C. §§1981 and 1983; and

WHEREAS on October 29, 1973 the Court granted plaintiffs' motion to amend the complaint to add a claim under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000e et seq.); and

WHEREAS on May 2, 1973 the Court granted plaintiffs' motion to allow the action to be maintained as a class action pursuant to Rules 23(b)(1) and (2) of the Federal Rules of Civil Procedure; and

WHEREAS the Court granted plaintiffs' motion dated July 9, 1973 to amend and supplement the pleadings and to redefine plaintiffs' class to include all those persons who have been, or would in the future be, subject to dismissal or rejection as to employment by the New York City Transit Authority or the Manhattan and Bronx Surface Transit Operating Authority (hereafter sometimes

collectively referred to as "the TA") solely on the ground of present or past participation in methadone maintenance programs; and

WHEREAS the case has been tried to the Court without a jury; and

WHEREAS, in an opinion dated August 6, 1975, the Court determined that the TA has discriminated against plaintiffs and their class in violation of the Constitution of the United States and 42 U.S.C. §1983; and

WHEREAS, in a supplemental Opinion dated May 5, 1976, the Court determined that the TA has discriminated against plaintiffs and their class in violation of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000e et seq.;

IT IS HEREBY ORDERED that:

1. Except as specified in Paragraph 3 infra, the defendants New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, their members, directors, officers, agents and employees, are permanently enjoined and restrained from denying employment to, or dismissing from employment, any person solely because of present or past participation in methadone maintenance treatment.

2. Except as specified in Paragraph 3 infra, the employability of present or past methadone maintained persons (in all phases of the employment process, including new applications, promotions, transfers and dismissals) shall be considered by the TA according to appropriate personnel procedures to determine the suitability of the individual for the particular job. In the case of a present or past methadone maintained person, the TA is entitled to take into consideration all relevant factors about the person's

drug history, and the quality and reliability of any methadone maintenance program having treated the person, in determining the person's suitability for the job.

3. This injunction does not prevent the TA from adopting certain appropriate rules and regulations regarding the employability of present or past methadone maintained persons, such as:

a) A requirement of satisfactory performance in a methadone maintenance program for a specified period, such as a year, as a condition for employment;

b) A restriction against employment of such persons in sensitive categories such as subway motorman, subway conductor, subway towerman, bus driver, and positions dealing with high voltage equipment.

4. Within 30 days of the entry of this injunction, the TA shall, in accord with the standards set forth above reexamine the employability of plaintiffs Carl A. Beazer, Jose R. Reyes, Francisco Diaz and Malcolm K. Frazier, and shall submit within such time a written statement of its conclusions to the Court and to plaintiffs' counsel. The Court will then take appropriate action.

5. Within 30 days of the entry of this order, the TA shall submit to the Court and to plaintiffs' counsel a list of all persons denied TA employment, dismissed from TA employment, or who have resigned from TA employment, since December 15, 1972, where the TA records indicate that present or past participation in a methadone maintenance program was a cause of such action. The Court will then take appropriate action.

Permanent Injunction and Judgment dated May 5, 1976

JUDGMENT REGARDING NEW YORK CITY
CIVIL SERVICE COMMISSION et al.

WHEREAS the Court, in its opinion of August 6, 1975, determined that plaintiffs had shown no right to relief against the Civil Service Commission of the City of New York and certain related defendants, it is hereby

ADJUGED that the action be dismissed as to Civil Service Commission of the City of New York and the Personnel Department of the City of New York, Harry I. Bronstein, Chairman of the Civil Service Commission and Director of the Personnel Department, and David Stadtmauer and James W. Smith, members of the Civil Service Commission, and their successors in office without costs.

Dated: New York, New York
May 10, 1976

Thomas P. Griesa
U.S.D.J.

Carl A. BEAZER et al., Plaintiffs,

v.

NEW YORK CITY TRANSIT AUTHORITY et al., Defendants.

No. 72 Civ. 5307.

United States District Court, S. D. New York.

May 5, 1976.

A class action was brought against transit authority and officials thereof, challenging defendants' blanket refusal to employ any former heroin addicts participating in, or having completed, methadone maintenance programs, regardless of individual merits. The District Court, 399 F.Supp. 1032, held that the authority's employment policy violated the due process and equal protection clause of the Fourteenth Amendment. Plaintiffs subsequently renewed their application for relief under Title VII of the Civil Rights Act of 1964, admittedly for the sole purpose of obtaining the benefit of the Title VII provision authorizing an award of a reasonable attorney's fee to the prevailing party. The District Court, Griesa, J., held that while not adopted with a purpose of racial discrimination, the transit authority's employment policy had a substantially greater impact on minority groups than on whites, since between 62% and 65% of methadone-maintained persons in New York City are black and Hispanic, meaning that there are almost twice as many blacks and Hispanics as there are whites in this category; and since that employment policy was not grounded in any business necessity, it violated Title VII of the Civil Rights Act of 1964. The Court further held that, accordingly, plaintiffs were entitled to an award of attorney's fees.

Order accordingly.

1. Civil Rights ⇐44(2)

Title VII of the Civil Rights Act of 1964 does not require proof of a purpose or intent to carry out racial discrimination; it is sufficient to prove that an employer has adopted a test or criterion for employment which in fact operates in a racially discriminatory manner against minority races, where that criterion is not shown to be related to job performance. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

2. Civil Rights ⇐9.10

While not adopted with a purpose of racial discrimination, transit authority's policy against employment of all present and past methadone-maintained persons had a substantially greater impact on minority groups than on whites, since between 62% and 65% of methadone-maintained persons in New York City are black and Hispanic, meaning that there are almost twice as many blacks and Hispanics as there are whites in this category; and since that employment policy was not grounded in any business necessity, it violated Title VII of the Civil Rights Act of 1964. Civil Rights Act of 1964, §§ 701 et seq., 703(a) as amended 42 U.S.C.A. §§ 2000e et seq., 2000e–2(a).

3. Civil Rights ⇐39

Fact that other policies of transit authority apparently had resulted in a liberal amount of employment for minorities by the authority was no defense with respect to exclusionary policy under scrutiny in the instant case. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

4. Civil Rights ⇐46

In a case brought under Title VII of the Civil Rights Act of 1964, attorney's fees are normally awarded the prevailing party, unless there are exceptional circumstances indicating that such an award should not be made. Civil Rights Act of 1964, § 706(k) as amended 42 U.S.C.A. § 2000e–5(k).

Legal Action Center of the City of New York, Inc., New York City, Elizabeth B. DuBois, Eric D. Balber, Mark C. Morril, Michael Meltsner, New York City, for plaintiffs.

Stuart Riedel, Gen. Counsel, New York City Transit Authority, by E. W. Summers, G. T. Dunn, L. Smejda, Brooklyn, N. Y., for defendants.

SUPPLEMENTAL OPINION

GRIESA, District Judge.

On August 6, 1975 I filed a decision holding that the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority (hereafter collectively referred to as "the TA") are committing violations of the due process and equal protection clauses of the Fourteenth Amendment, and also violations of 42 U.S.C. § 1983, in their blanket refusal to employ any former heroin addicts participating in, or having completed, methadone maintenance programs, regardless of individual merits.

In that decision, I noted the allegation of plaintiffs that the exclusionary policy has a disparate impact on blacks and Hispanics, resulting in violation of 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* However, I deemed it unnecessary to reach this racial discrimination claim.

Plaintiffs have renewed their application for relief under Title VII. Admittedly, the sole purpose of this application is to obtain the benefit of the provision in Title VII authorizing the award of a reasonable attorney's fee to the prevailing party. 42 U.S.C. § 2000e–5(k). In the absence of such express statutory authority the award of fees in the present case could not be made. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975).

It is clear that the question of the attorney's fee deals with a substantial right, and plaintiffs are entitled to an adjudication of their Title VII claim. I hold that the proof establishes a valid cause of action under Title VII, and that plaintiffs' attorneys are entitled to the award of a reasonable fee, to be assessed.

[1] The relevant provisions in Title VII prohibiting racial discrimination in employment are contained in 42 U.S.C. 2000e–2(a), which provides:

> "(a) It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

The cases hold that Title VII does not require proof of a purpose or intent to carry out racial discrimination. *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S.Ct. 849, 28 L.Ed.2d 158 (1971). It is sufficient to prove that an employer has adopted a test or criterion for employment which in fact operates in a racially discriminatory manner against minority races, where that criterion is not shown to be related to job performance. *Id.* at 431. *See United States v. Bethlehem Steel Corp.*, 446 F.2d 652, 662 (2d Cir. 1971).

I have already held in my earlier opinion that the blanket exclusionary policy of the TA against present and former methadone maintenance patients is not rationally related to any employment or business needs of the TA. This leaves for determination, under the Title VII claim, the question of whether the policy of the TA has a racially discriminatory effect against blacks and Hispanics.

The four named plaintiffs are members of minority races or national groups. Two are blacks and two are Hispanics. Of the TA employees referred to the TA's medical consultant for suspected violation of its drug policy since July 1972, 81% were black and Hispanics and only 19% were white.

Plaintiffs place their greatest reliance on the argument that, although the policy of the TA is racially neutral on its face (dealing solely with problems of drug addiction and treatment), the impact of the policy will tend inevitably to exclude more blacks and Hispanics from TA employment, because of the admitted fact that the class of present and former methadone maintained persons includes substantially more blacks and Hispanics than whites.

[2, 3] Between 62% and 65% of methadone maintained persons in New York City are black and Hispanic, meaning that there are almost twice as many blacks and Hispanics as there are whites in this category. Thus the policy of the TA, while not adopted with a purpose of racial discrimination, has been shown to have a substantially greater impact on minority groups than on whites. Since the policy is not grounded in any business necessity, it violates Title VII. *Griggs v. Duke Power Co.*, 401 U.S. at 430 n.6, 91 S.Ct. 849; *Green v. Missouri Pacific R.R.*, 523 F.2d 1290, 1293–95 (8th Cir. 1975); *United States v. Georgia Power Co.*, 474 F.2d 906, 918 (5th Cir. 1973); *Gregory v. Litton Sys.*, 316 F.Supp. 401, 403 (C.D.Cal. 1970), *aff'd*, 472 F.2d 631 (9th Cir. 1972). The fact that *other* policies of the TA apparently have resulted in a liberal amount of employment for minorities by the TA is not a defense with respect to the exclusionary policy under scrutiny in this case. *Davis v. Washington*, 168 U.S.App.D.C. 42, 512 F.2d 956, 960–61 and n.31 (1975), *cert. granted*, 423 U.S. 820, 96 S.Ct. 33, 46 L.Ed.2d 37 (1975), *United States v. Jacksonville Terminal Co.*, 451 F.2d 418, 443 (5th Cir. 1971) *cert. denied*, 406 U.S. 906, 92 S.Ct. 1607, 31 L.Ed.2d 815 (1972).

[4] In a Title VII case, attorney's fees are normally awarded to the prevailing party, unless there are exceptional circumstances indicating that such an award should not be made. No such circumstances exist in the present case. Plaintiffs are clearly entitled to a fee award. *Lea v. Cone Mills Corp.*, 438 F.2d 86, 88 (4th Cir. 1971); *Parham v. Southwestern Bell Telephone Co.*, 433 F.2d 421 (8th Cir. 1970). *See Alyeska Pipeline Service Co. v. Wilderness Soc'y*, 421 U.S. 240, 261–62, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975); *Alexander v. Gardner Denver Co.*, 415 U.S. 36, 47, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974); *Northcross v. Board of Educ.*, 412 U.S. 427, 93 S.Ct. 2201, 37 L.Ed.2d 48 (1973); *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968); *Fort v. White*, 530 F.2d 1113 (2d Cir. 1976).

A hearing will be held on the amount of the award.

So ordered.

Mario BERTOLINO, Plaintiff,

v.

ITALIAN LINE, Defendant.

No. 72 Civ. 2981.

United States District Court,
S. D. New York.

May 6, 1976.

International opera singer brought action against owner of ocean liner seeking damages for statutory and common-law copyright infringement and for conversion, arising out of the playing of the singer's recordings on the ocean liner. On the owner's motion to dismiss, the District Court, Irving Ben Cooper, J., held that where an agreement called for the singer to devote his services exclusively to producing 60 recordings and to make designated appearances, provided that the producers would direct, underwrite and supervise production of the recordings and specified how the profits would be distributed, the singer had no copyright, absent a contractual reservation; that only the proprietor of the copyright had standing to sue for its infringement; that there was no evidence that the

Affidavit of Nathaniel Wright dated September 17, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER, et al.,	:	
Plaintiffs,	:	72 Civ. 5307
-against-	:	(T.P.G.)
NEW YORK CITY TRANSIT ATUHORITY, et al.,	:	
Defendants.	:	AFFIDAVIT

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

NATHANIEL WRIGHT, being duly sworn, deposes and says:

1. I have been an employee of the New York City Transit Authority (TA) since 1970. Since March 5, 1976 I have been suspended from my job without pay. I make this affidavit to describe to the Court the series of events that followed the TA's discovery in March of this year that I was enrolled in methadone maintenance treatment and the hardships that my family and I have suffered since then.

2. From April, 1970 until May, 1970 I worked as a TA Structure Maintainer painting TA structures; from May, 1970 until June, 1975 I worked as a TA Car Maintainer painting subway cars; and after June, 1975 I again worked as a Structure Maintainer.

3. In February, 1976, I submitted an application for transfer to a TA bus-operator's position upon the advice of my supervisors who had informed me and several other employees that persons working in our job title might be subject to layoffs. As a result of this application I was ordered to report on March 2, 1976 for a pre-appointment medical examination, which I did.

4. The March 2nd medical examination included a physical examination lasting about twenty minutes and written

medical questionnaires which I completed. I also left a urine specimen for testing. On the questionnaires I stated that I did not use drugs, and I did not indicate that I was in a methadone program. I knew that these responses were not accurate since I had been participating in the New York City Methadone Maintenance Treatment Program since 1974, but I gave them because I believed that if the TA discovered my drug history it would certainly dismiss me. Although I am now aware of the Beazer decision, at the time I had not been informed of it by the TA or through any other means.

5. On March 5, 1976 I was ordered to return to the Medical Department, and I did so that day. I was taken in to see Dr. Louis Lanzetta, who I knew to be the TA's Medical Director. Dr. Lanzetta told me that the urine specimen I had given at my examination on March 2nd had revealed that I used methadone, and he asked me whether I was participating in a methadone maintenance program. I told him that since January, 1974 I had participated in the New York City Methadone Maintenance Treatment Program at its Jerome Avenue Clinic in the Bronx. In reply, Dr. Lanzetta told me the TA would not continue to employ me because it had a policy against its employees participating in methadone programs.

6. Dr. Lanzetta then called two other men into his office. I did not know these men but they were introduced as members of the Labor Relations Department of the TA. They repeated Dr. Lanzetta's statement that I could not work for the TA because of its policy against employees participating in methadone programs. Dr. Lanzetta then said that if I did not resign my job position the TA would bring disciplinary charges against me; I would lose my job through dismissal; and the reason for this dismissal would be included in my records and would be given to any employer to whom I would apply for a position in the future.

BEST COPY AVAILABLE

7. After the two men from Labor Relations spoke, I told them and Dr. Lanzetta that my methadone treatment did not affect my ability to do my job and that, therefore, I would not resign. Dr. Lanzetta then told me that I would be "marked no work permanent," that disciplinary charges would be filed against me, and that I would be suspended without pay until a decision was reached on those charges.

8. On March 5, 1976 I was suspended without pay from the TA, and I remain suspended.

9. The Transit Authority brought disciplinary charges against me on April 19, 1976, and a hearing on those charges was held on June 8, 1976 and June 15, 1976. To this date I have not been notified of a decision regarding the charges. At no time prior to this hearing did any TA official question me about the details of my methadone maintenance treatment or my progress in it.

10. I am married with three children, ages 12, 10 and 2. My wife is unemployed. Since my suspension from the TA I have looked for other employment without success. Prior to my suspension, my wife and I had savings of about $3,000, all of which has since been spent to support our family. At present we are behind in payment of numerous household bills. Because of our desperate financial situation we recently applied for welfare and now receive benefits of approximately $80 per week. This amount is $110 per week less than my TA take home pay and substantially below the support required for my large family. Additionally, as a condition of receiving these benefits, we have been required to assign the equity in our home to the New York City Department of Social Services.

11. Since my enrollment in the New York City Methadone Maintenance Treatment Program in January 1974 I have used no illicit drugs and I have complied in every way with the program's rules. In July of this year I completed a gradual methadone

detoxification schedule and since that time I have been totally drug-free. I believe that I am mentally and physically able to return to work and support myself and my family.

Dated: New York, New York
September 17, 1976

Nathaniel Wright
NATHANIEL WRIGHT

Sworn to before me this
17th day of September, 1976

Eric D. Balser
Notary Public

ERIC D. BALSER
Notary Public, State of New York
No. 31-4601151
Qualified in New York County
Commission Expires March 30, 1977

Affidavit of Daniel Redner, M.D., dated June 14, 1976

TRIAL BOARD
NEW YORK CITY TRANSIT AUTHORITY

- -X

In the Matter of Charges :
Preferred Against :

NATHANIEL WRIGHT
(Car Maintainer - Pass No. 986357:
Maintenance of Way Department)
:

- -X

STATE OF NEW YORK)
COUNTY OF BRONX) ss.:

DANIEL REDNER, M.D., being duly sworn, deposes and says:

1. I am unit director of the New York City Methadone Maintenance Treatment Program, Jerome Avenue Clinic, 2005 Jerome Avenue, Bronx, New York. I make this affidavit in order to certify the treatment status of Nathaniel Wright.

2. I have directed the Jerome Avenue Clinic, which serves approximately six hundred patients, since its establishment in 1972. In the course of my practice at the clinic, I have treated on a personal basis more than 1200 patients and have had the opportunity to observe former heroin addicts at all stages of treatment and rehabilitation.

3. Nathaniel Wright has been in treatment at the Jerome Avenue Clinic since January 10, 1974. Initially he visited the clinic daily and was under constant supervision both by his counselor, Doris Jones, and by myself. New York State methadone program regulations require that a patient visit the clinic every day during the first three months of his or her treatment and that this frequency of attendance may be reduced only upon a showing of satisfactory progress toward rehabilitation. Mr. Wright never missed an appointment during his first three months in treatment and his behavior was exemplary. Accordingly, his mandatory clinic visits were reduced to three per week as soon as it was possible to do so.

4. New York State methadone program regulations specify that a patient's attendance requirement at a methadone clinic can be reduced to two visits a week when he or she has been enrolled in treatment for two years, if at that point the patient demonstrates a high degree of responsibility and rehabilitation. Because Mr. Wright had never violated a clinic rule and had been extremely cooperative and successful in all aspects of his treatment, he was accorded the privilege of twice weekly clinic visits as soon as he was eligible. Mr. Wright is one of only ten patients out of six hundred in the entire Jerome Avenue Clinic for whom this reduced attendance schedule is deemed appropriate.

5. When Mr. Wright comes to the clinic, he is given the amount of methadone he will need until his next visit. This amount is now being gradually reduced since Mr. Wright is engaged in a detoxification regimen. Mr. Wright's initial dosage of methadone was 50 mg per day. At the present time it is 10 mg per day.

6. Mr. Wright is the only patient I have ever recommended for detoxification within one year of his entrance into methadone treatment. Because Mr. Wright had made such excellent progress from the very beginning of his treatment and was eager to reduce his use of methadone as soon as possible, I did not hesitate to prescribe an early detoxification regimen for him. Mr. Wright has shown no adverse physical or psychological reaction to detoxification. On the contrary, he enjoys excellent health and I am confident that by the end of his treatment he will attain a completely comfortable drug-free status.

7. Once a week, the clinic analyzes a sample of Mr. Wright's urine for the purpose of detecting the illicit use of drugs. Since Mr. Wright began treatment, this test has never shown the presence of any illicit drug use.

8. Clinic staff members and myself are able to observe Mr. Wright whenever he comes to the clinic. Staff members and myself confer with Mr. Wright frequently. At no time have I or any member of the staff detected any indication that Mr. Wright is abusing drugs or alcohol, or that his ability to function normally at work or at other times is in any way limited. To the contrary, Mr. Wright has shown exceptional mental and physical alertness which he could channel most productively into his employment.

9. Throughout his treatment, Mr. Wright has shown impressive emotional stability. He is happily married and has become deeply involved in a number of religious activities. Although his dismissal by the Transit Authority has caused him great financial hardship, he has handled this adversity in a mature and responsible manner.

10. In summary, I would describe Nathaniel Wright as a model patient. He has shown cooperation, reliability and maturity which clearly rank him as one of the most outstanding participants at this clinic. Without hesitation, I offer my highest recommendation of his capacity to perform as a responsible employee.

11. I would be pleased to report regularly to the Transit Authority regarding Mr. Wright's progress in treatment and to cooperate with the Transit Authority in any way that might be useful in evaluating Mr. Wright's employability. Any release of treatment information would of course be conditioned upon compliance with applicable state and federal law regarding confidentiality.

Daniel Redner, M.D.

Dated: New York, New York
June 14, 1976

Sworn to before me
this 14th day of June, 1976.

Notary Public

EDWARD J. BOURNE
NOTARY PUBLIC, State of New York
No. 03-4622520
Qualified in Bronx County
Commission Expires March 30, 1977

Notice of Motion (re Attorneys' Fees)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

CARL A. BEAZER, et al.,

Plaintiffs,

-against-

NEW YORK CITY TRANSIT AUTHORITY, et al.,

Defendants.

- X

72 Civ. 5307

(T.P.G.)

NOTICE OF MOTION

To: Alphonse D'Ambrose
Attn: Edward W. Summers, Esq.
General Counsel's Office
New York City Transit Authority
370 Jay Street
Brooklyn, New York 11201

S I R S:

PLEASE TAKE NOTICE that, upon the affidavits annexed hereto, the memorandum filed herewith, and all other papers and proceedings had herein, plaintiffs will move this Court, at the United States Courthouse, Foley Square, New York, New York, on November 11, 1976, at 10 a.m., or as soon thereafter as counsel can be heard, for an order declaring defendants' liability for attorneys' fees pursuant to the Civil Rights Attorney's Fees Award Act of 1976 and fixing the amount of attorneys' fees.

Dated: New York, New York
October 29, 1976

Mark C. Morril

ELIZABETH B. DuBOIS
ERIC D. BALBER
MARK C. MORRIL
(Legal Action Center of the City of New York, Inc.)
271 Madison Avenue
New York, New York 10016
(212) 679-6502

MICHAEL MELTSNER
Columbia Law School
435 West 116 Street
New York, New York 10027

Attorneys for Plaintiffs

Affidavit of Mark C. Morril dated October 29, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

CARL A. BEAZER, et al., :

Plaintiffs, : 72 Civ. 5307 (T.P.G.)

-against- :

NEW YORK CITY TRANSIT AUTHORITY, et al., :

Defendants. : AFFIDAVIT

- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MARK C. MORRIL, being duly sworn, deposes and says:

1. I am one of the attorneys for plaintiffs in the above-captioned case, and I make this affidavit in support of Plaintiffs' annexed motion.

2. I have reviewed time records and reports of hours spent on the Beazer case submitted to me by all of the lawyers who devoted time to the representation of plaintiffs and their class. Almost all of this time is accounted for in contemporaneous written records and diary entries. In those few instances where such records were not available, the lawyers involved have reconstructed records based on a review of the proceedings in the case, in accordance with the customary procedure in the Southern District and elsewhere. See e.g., City of Detroit v. Grinnell Corp., 68 Civ. 4026 (S.D.N.Y. April 21, 1976) (N.Y.L.J. April 26, 1976 p. 1); Gilman v. Mohawk Data Sciences Corp., 71 Civ. 472 (S.D.N.Y. May 3, 1976).

3. I have also prepared a Brief Summary of Major Services Rendered by Plaintiffs' Counsel in the case from July, 1972 to October 8, 1976. A copy of this Brief Summary is attached hereto as Exhibit A. Also attached, as Exhibit B, is a listing of plaintiffs' costs incurred to October 8, 1976.

4. The attached Brief Summary provides some indication, as further detailed in the accompanying memorandum of law, of the extent and volume of proceedings in this litigation, covering some four years time, involving some 18 conferences and hearings in the District Court, substantial discovery proceedings and a lengthy trial. Both the factual and legal issues in the case have been novel and complex, immersing the attorneys in sophisticated medical and scientific proof. Attached hereto as Exhibit C is a list of briefs, opinions, orders, and other papers in this case which should give further indication of the extent and diversity of issues which have arisen during the course of the litigation. As further detailed in the accompanying memorandum of law, this case has been a major litigation in every sense of the word, and the time devoted to it is accordingly large.

5. The attached chronology indicates a grand total of 4,449.25 hours total time devoted to the case by all lawyers for plaintiffs, and the records on which the chronology was based indicate that this total time was divided as follows between senior attorneys (11 or more years at the bar), junior attorneys (2-5 years at the bar), and law students:

Work on papers, pleadings and briefs:

Senior attorneys	616.75
Junior attorneys	1189.00

Preparation for depositions, hearings, trial and court conferences:

Senior attorneys	250.50
Junior attorneys	937.00
Law Students and Paralegal	35.00

Attendance at depositions, hearings, trial and court conferences:

Senior attorneys	165.50
Junior attorneys	382.25

General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief, meetings with counsel and other persons:

Senior Attorneys	275.00
Junior attorneys	460.25
Law students and paralegal	138.00

Total Hours:

Senior attorneys	1,307.75
Junior attorneys	2,968.50
Law students and paralegal	173.00

6. The credentials and experience of the lawyers who served as principal counsel for plaintiffs and the time devoted by each such person to various aspects of the case are as follows:

Elizabeth B. DuBois

Work on papers, pleadings and briefs:	535.25
Preparation for depositions, hearings, trial and court conferences:	225.50
Attendance at depositions, hearings, trial and court conferences:	153.50
General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief, meetings with counsel and other persons:	195.00
Total hours:	1,109.25

Ms. DuBois is the founder and present director of the Legal Action Center, a public interest law firm funded by a number of private foundations including the Ford Foundation and by one governmental agency. She is presently a member of the Executive Committee of the Association of the Bar of the City of New York, of the Board of Overseers of Harvard University and of the Overseers' Committee to Visit Harvard Law School. Ms. DuBois formerly served as Counsel to the Vera Institute of Justice, as a staff attorney at the NAACP Legal Defense Fund, and as Special Assistant to the Executive Director (James Vorenberg), of the President's

Commission on Law Enforcement and Administration of Justice. She was an editor of the Harvard Law Review and Law Clerk to Judge Henry Edgerton of the Court of Appeals for the District of Columbia. Ms. DuBois has been a member of the bar for over eleven years and has been a litigator for nine years. She has handled dozens of cases in the federal appellate and United States Supreme Courts, has handled dozens of federal district court proceedings, and has been primarily responsible for such complex federal litigation as Chance v. Board of Examiners, 70 Civ. 4141, during all of the years of its litigation. This biographical data is further elaborated in a resume attached as Exhibit D hereto.

Eric D. Balber

Work on papers, pleadings and briefs:	858.25
Preparation for depositions, hearings, trial and court conferences:	427.50
Attendance at depositions, hearings, trial and court conferences:	200.75
General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief, meetings with counsel and other persons:	278.00
Total hours:	1,764.50

Mr. Balber has been a staff attorney at the Legal Action Center since 1973. He formerly served as a staff attorney at the Vera Institute of Justice in New York. He is a 1972 graduate of the Columbia Law School where he was a Harlan Fiske Stone Scholar. Further biographical data is supplied in the resume attached hereto as Exhibit E.

Mark C. Morril

Work on papers, pleadings and briefs:	324.75
Preparation for depositions, hearings, trial and court conferences:	400.25

Attendance at depositions, hearings, trial and court conferences:	154.00
General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief, meetings with counsel and other persons:	176.25
Total hours:	1,055.25

Mr. Morril has been a staff attorney at the Legal Action Center since 1973. He formerly served as a law clerk to District Court Judge Jack B. Weinstein of the Eastern District of New York. He is a 1972 graduate of the Columbia Law School where he was an editor of the Columbia Law Review, a James Kent Scholar, and a Harlan Fiske Stone Scholar. Further biographical data is supplied in the resume attached hereto as Exhibit F.

Michael Meltsner

Work on papers, pleadings and briefs:	81.50
Preparation for depositions, hearings, trial and court conferences:	25.00
Attendance at depositions, hearings, trial and court conferences:	12.00
General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief, meetings with counsel and other persons:	80.00
Total hours:	198.50

Mr. Meltsner is Professor of Law at Columbia Law School where he teaches a clinical seminar, criminal procedure and constitutional litigation. He is a former Senior Staff Attorney and First Assistant Counsel at the NAACP Legal Defense Fund and has fifteen years experience as a trial and appellate attorney in major civil rights cases. He is the author of numerous articles and several books. Mr. Meltsner's background and qualifications are further elaborated in his annexed affidavit and the attachment to that affidavit.

Mr. Hiller is presently a staff attorney at the Puerto Rican Legal Defense and Education Fund, Inc. He formerly served as Coordinating Attorney at Community Action for Legal Services where he represented plaintiff Jose Reyes in the initial stages of this litigation. He is a 1969 graduate of the Columbia Law School, and has litigated a number of major federal cases such as e.g., Aspira of New York v. Board of Education of the City of New York, 65 F.R.D. 541 (S.D.N.Y. 1975); Torres v. Sachs, 538 F.2d 10 (2d Cir. 1976), and Nelson v. Sugarman, 361 F.Supp. 1132 (S.D.N.Y. 1972).

Law Students

Various students from Columbia, New York University, Rutgers, Stanford and Yale Law Schools.

General research and investigation;	130 hours

Paralegal

Sarah Ackerman

Preparation for trial;	35 hours
Communication with class members	8
Total hours:	43 hours

8. Based on the prevailing billing rates for attorneys of comparable experience and credentials in New York City (see annexed affidavits of Arthur L. Liman and William Josephson and accompanying memorandum of law at pages 9-11) I have calculated the time for each of the attorneys and other persons listed above as follows:

Senior Attorneys	
Mr. Meltsner	$110 per hour
Ms. DuBois	$100 per hour
Junior Attorneys	
(Messrs. Balber, Morril, Dalton and Hiller; Ms. Brooks)	$60 per hour
Law Students and Paralegal	$25 per hour

7. In addition to the time of the principal attorneys for plaintiffs set forth in ¶6 supra which comprises the vast majority of time in this case, the following attorneys, law students, and paralegal incurred some time on the case as indicated below:

Margaret K. Brooks

Preparation for trial; 18 hours

Ms. Brooks has been a staff attorney at the Legal Action Center since 1974. She is a 1972 graduate of the Columbia Law School where she was an editor of the Columbia Law Review and a Harlan Fiske Stone Scholar. She formerly served as law clerk to District Judge Frederick Van Pelt Bryan of the Southern District of New York.

Harlon L. Dalton

Preparation for trial;	72.25 hrs.
Attendance at trial;	22.5 hrs.
Total hours:	94.75 hrs.

Mr. Dalton has been a staff attorney at the Legal Action Center since 1974. He is a 1973 graduate of the Yale Law School. He formerly served as law clerk to District Court Judge Robert L. Carter of the Southern District of New York.

Richard J. Hiller

Work on papers, pleadings and briefs:	6 hours
Preparation for depositions, hearings, trial and court conferences:	19 hours
Attendance at depositions, hearings, trial and court conferences:	5 hours
General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief, meetings with counsel and other persons:	6 hours
Total hours:	36 hours

9. Based on the nature of the case and the prevailing law with respect to premium fees for contingency and high risk cases, as set forth at pages 13-24 of the accompanying memorandum of law, I have applied a multiplier of 2 to the time set forth in ¶ 5 supra, in calculating the total fee to which plaintiffs are entitled.

10. Based on the hours set forth in ¶¶ 5, 6 and 7 supra, the billing rates set forth in ¶8 supra, and the multiplier set forth in ¶9 supra, I have performed the following calculations to arrive at the fee to which plaintiffs are entitled:

198.50	hours at $110/hour	$ 21,835
1,109.25	hours at $100/hour	110,925
2,968.50	hours at $60/hour	178,110
173	hours at $25/hour	4,325
	total time charges	$315,195
	X multiplier of 2 =	$630.390
	Plaintiffs' costs	$ 14,290
	Total Attorneys' fees and costs to which plaintiffs are entitled	$644,680

11. Plaintiffs have chosen October 8, 1976, the date of the last court conference in this case as the cut-off date for this fee application. This application is made without prejudice to plaintiffs' right to file a supplemental application to recover fees for hours incurred subsequent to October 8, 1976.

Dated: New York, New York
October 29, 1976

Mark C. Morril
MARK C. MORRIL

Sworn to before me this
29th day of October, 1976

Eric D. Balber
Notary Public

ERIC D. BALBER
Notary Public, State of New York
No. 31-4501151
Qualified in New York County

EXHIBIT A—BRIEF SUMMARY OF MAJOR SERVICES RENDERED BY PLAINTIFFS' COUNSEL

BRIEF SUMMARY OF MAJOR SERVICES RENDERED BY PLAINTIFFS' COUNSEL IN BEAZER v. NEW YORK CITY TRANSIT AUTHORITY

July, 1972 - October 8, 1976

APPROXIMATE DATES	NATURE OF WORK	TIME (Hours)
July, 1972 to 11/8/73	Initial Proceedings - background investigation and research; interviewing witnesses and other persons; preparing EEOC proceedings for named plaintiffs; preparing original complaint; preparing memorandum with accompanying affidavits in opposition to TA motion to dismiss; preparing class action motion and supporting memorandum and affidavits; preparing and filing 2 amended complaints and supporting memoranda and affidavits (adding Title VII claims following exhaustion of administrative remedies and adding plaintiff Frasier); opposition to proposed stay; preparing motion for preliminary relief and supporting memorandum and affidavits. Court conferences: 5/2/73; 7/5/73; 9/18/73; 9/24/73; 10/10/73; 10/24/73; 10/29/73.	
	Work on papers, pleadings and briefs	628.50
	Preparation for hearings and court court conferences	68.75
	Attendance at hearings and conferences	36.00
	General research, investigation, case planning, communication with and provision of legal advice and representation to class members, meetings with counsel and other persons	492.75
6/22/73 to 8/15/74	Discovery - preparing of first interrogatories and document requests to TA defendants; preparing of first interrogatories and document requests to City defendants; preparing of interrogatories and document requests to TA board members; preparing of motion for sanctions for failure to make discovery and supporting memorandum and affidavits; preparing of response to TA's interrogatories and document requests; obtaining waivers of confidentiality for release of methadone maintenance treatment program records; preparing of proposed order re release of records; preparing for and attendance at TA's depositions of 4 named	

plaintiffs; preparing motion for protective order and supporting memorandum and affidavits (re 5th Amendment rights of plaintiffs at depositions); attendance at TA's depositions of 2 methadone programs; preparing for and attendance at plaintiffs' depositions of 4 TA officials, 4 TA board members, 2 City Department of Personnel employees; preparing of motion to compel testimony of Harold Trigg and supporting memorandum and affidavits; preparing of 2nd interrogatories and document requests to TA defendants, preparation of 2nd interrogatories and document requests to City defendants.

Court conferences: 10/25/73; 11/2/73; 11/16/73; 1/2/74; 4/4/74.

Work on papers, pleadings and briefs	272.00
Preparation for depositions, hearings, trial and court conferences	154.25
Attendance at depositions, hearings and conferences	126.75
General research, investigation, case planning, communication with and provision of legal advice and representation to class members, meetings with counsel and other persons	96.50

8/74 to 10/21/74

Preparation for Trial - preparing of plaintiffs' proposed findings of fact; response to TA's proposed findings of fact; preparing of proposed findings of fact agreed to by plaintiffs and defendants; preparing of pre-trial stipulations re authenticity of documents and signing depositions; preparing of trial exhibits; preparing of Compilation of Agreed to and Contested Facts (Px 31 -- the "black book"); preparing plaintiffs' pre-trial brief on the law; designation of relevant portions of depositions; communication with and interviews of prospective witnesses; preparing of summary of proposed testimony of plaintiffs' witnesses at trial; preparing of written statements by witnesses in lieu of testimony; preparation of plaintiffs' witnesses and preparing for cross examination

Court Conferences: 7/18/74; 7/31/74.

Work on papers, pleadings and briefs	281.50
Preparation for depositions, hearings, trial and court conferences	568.75
Attendance at depositions, hearings and conferences	13.25

	General research, investigation, case planning, communication with and provision of legal advice and representation to class members, meetings with counsel and other persons	51.75
10/22/74 to 2/15/75	Trial - preparing for and attendance at trial: October 22, 23, 25, 29 and 30, 1974; January 7, 9, 10, 27, 28, 31, 1975; February 3, 7, 12, 1975; Court conference: November 27, 1974; Tour of TA facilities: November 12, 1974.	
	Work on papers, pleadings and briefs	5.00
	Preparation for depositions, hearings, trial and court conferences	417.00
	Attendance at conferences and trial	346.50
	General research, investigation, case planning, communication with and provision of legal advice and representation to class members, meetings with counsel and other persons	39.00
2/12/75 to 10/8/76	Post-trial period - preparing of post-trial memoranda on confidentiality of methadone treatment records and the nature and structure of TA employment; preparing of proposed final order; preparing of Title VII and attorneys' fees motions and supporting memoranda; monitoring of compliance with permanent injunction; preparing of motion to supplement and modify the May 20 order.	
	Court conferences: 12/16/74; 1/23/75; 7/22/75; 10/8/76.	
	Work on papers, pleadings and briefs	618.75
	Preparation for hearings and court conferences	13.75
	Attendance at hearings and conferences	25.25
	General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief, meetings with counsel and other persons.	193.25

EXHIBIT B—DISBURSEMENTS MAY 1, 1973 TO OCTOBER 8, 1976

EXHIBIT B

Beazer v. New York City Transit Authority

May 1, 1973 to October 8, 1976

Court Transcripts	$ 5,576
Discovery Transcripts	1,707
Filing Fees	141
Messenger Service	851
Source Materials	75
Travel & Subsistence	1,746
Xerox	4,194
TOTAL	$14,290

EXHIBIT C—LIST OF BRIEFS, OPINIONS, ORDERS AND OTHER PAPERS FILED WITH THE COURT DECEMBER 15, 1972 TO OCTOBER 8, 1976

Beazer v. N.Y.C. Transit Authority

72 Civ. 5307

LIST OF BRIEFS, OPINIONS, ORDERS, AND OTHER PAPERS FILED WITH THE COURT DECEMBER 15, 1972 - OCTOBER 8, 1976

*	1.	Complaint - Class Action	12/15/72
	2.	Stipulation Extending TA's Time to Answer Complaint	1/9/73
	3.	TA's Motion to Dismiss; Affidavit; Supporting Memorandum	2/9/73
*	4.	Pl's Motion for Class Action Determination; Affidavit; Supporting Memorandum	2/13/73
	5.	Stipulation with City Ds' Adjourning Pls' Motion for a Class Action Determination and Extending City Ds' Time to Answer Complaint	2/20/73
	6.	Stipulation with TA Adjourning Pls' Motion for a Class Action Determination and TA's Motion for Dismissal and Summary Judgment	2/20/73
	7.	City Ds' Answer	3/20/73
	8.	Order to Show Cause for Leave to Appear Amicus Curiae; TWU Affidavit in Opposition to TA's Motion to Dismiss; Supporting Memorandum	3/30/73
*	9.	Affidavits of DuBois and Eleanor Norton in Opposition to TA's Motion to Dismiss	4/5/73
*	10.	Pls' Memorandum in Opposition to TA's Motion to Dismiss	4/5/73
*	11.	Pls' Letter to Griesa, J. (re Snead)	4/25/73
	12.	Orders Denying TA's Motion to Dismiss the Complaint; Granting Class Action Motion; Granting TWU Leave to Appear as Amicus Curiae (by endorsement)	5/2/73
	13.	TA's Answer and TA Ds' Letter to Griesa, J.	5/30/73
*	14.	Pls' First Interrogatories and Document Requests to TA	6/22/73
*	15.	Pls' Interrogatories and Document Requests to TA Board Members	6/29/73

(continued)

* Denotes papers prepared by plaintiffs' counsel.

Exhibit C

*	16.	Pls' First Interrogatories and Document Requests to City Ds'	6/29/73
*	17.	Pls' Notice of Motion to Amend Pleadings; Affidavit; Proposed Amended Complaint; Supporting Memorandum	7/9/73
	18.	TA's Letter to Griesa, J. (re action on amended complaint)	7/11/73
	19.	Affidavit of Harry I. Bronstein (re proposed stay)	7/12/73
*	20.	Affidavit of DuBois (re proposed stay); Letter to Griesa, J.	7/20/73
	21.	TA's Affidavit in Opposition to Pls' Motion to Amend the Pleadings	8/17/73
	22.	TA's Letter to Griesa, J. (re proposed stay)	8/17/73
*	23.	Pls' Second Motion to Amend the Pleadings; Affidavit; Supporting Memorandum	8/27/73
	24.	City's Letter to Griesa, J. (re conference of 9/18/73)	8/29/73
*	25.	Pls' Letter to Griesa, J. (re conference of 9/18/73)	9/12/73
	26.	TA's Letter to Griesa, J. (re conference of 9/18/73)	9/14/73
*	27.	Pls' Letter to TA (re Pls' interrogatories)	9/14/73
*	28.	Pls' Letter to Griesa, J. (re summary of proceedings to date) and Memorandum	10/4/73
	29.	TA's Answer to Pls (re extension of time to answer Pls' interrogatories)	10/5/73
*	30.	Pls' Letter to TA (re response to TA's letter of 10/5/73)	10/9/73
*	31.	Pls' Motion for Sanctions for Failure to Make Discovery; Affidavit; Letter to Griesa, J.; Supporting Memorandum	10/18/73
	32.	TA's Notice of Taking Pls' Depositions upon Oral Examination	10/15/73
	33.	TA's Interrogatories and Requests for Production of Documents	10/19/73
	34.	TA's Response to Pls' Interrogatories and Document Requests	10/23/73

(continued)

Exhibit C

*	35.	Pls' Application for a Temporary Restraining Order and a Preliminary Injunction--Order to Show Cause; Affidavits of Vannie Smith, George Maxwell, DuBois; Supporting Memorandum	10/24/73
	36.	TA's Affidavit in Opposition to Pls' Application for a Preliminary Injunction; Supporting Memorandum	10/29/73
*	37.	Pls' Supplemental Affidavit in Support of Pls' Motion for a Preliminary Injunction	10/29/73
	38.	Order Granting Motion to Amend Pleadings (by endorsement)	10/29/73
*	39.	Pls' Supplemental Memorandum in Support of Pls' Motion for Sanctions for Failure to Make Discovery	11/7/73
	40.	TA's Memorandum in Opposition to Pls' Motion for Sanctions for Failure to Make Discovery	11/8/73
*	41.	Order on Stipulation (re confidentiality of Pls' MMTP records)	11/ /73
*	42.	Amended Complaint	11/8/73
*	43.	Proposed Order and Waivers of Confidentiality Authorizing Release of MMTP Records, with Letter to Griesa, J. from Balber	11/6/73
	44.	Order Authorizing Release of MMTP Records	11/8/73
	45.	MaBSTOA's Responses to Pls' Interrogatories and Document Requests	11/9/73
	46.	Answers of D William J. Ronan to Pls' Interrogatories of 6/29/73, with Letter to DuBois from TA	11/16/73
	47.	TA Notices of Taking Depositions of MMTP Programs	11/30/73
	48.	Supplemental MaBSTOA Responses to Pls' Interrogatories and Document Requests	11/30/73
	49.	City Ds' Responses to Pls' Interrogatories and Document Requests	11/15/73
	50.	TA's Answer to Amended Complaint	12/3/73
*	51.	Pls' Notice of Taking Deposition Upon Oral Examination and Request for Production of Documents - Ds' McLaren, Lanzetta, Warren	12/18/73
*	52.	Pls' Notice of Taking Deposition Upon Oral Examination and Request for Production of Documents -- Ds' Ronan, Butcher, Bailey, Braun, Feldman	12/18/73

(continued)

*	53.	Pls' Responses to TA's Interrogatories and Document Requests	12/28/73
*	54.	Order Extending Order of 11/9/73 Authorizing Release of Pls' MMTP Records	1/10/74
*	55.	Order to Show Cause and Affidavit in Support of Pls' Motion for a Protective Order Pursuant to F.R. Civ, P. 26(c); Letter to TA Ds from Morril; Supporting Memorandum	1/18/74
	56.	TA's Memorandum in Opposition to Pls' Motion for a Protective Order Pursuant to F.R. Civ. P. 26(c)	1/21/74
	57.	Order Granting Protective Order	1/22/74
*	58.	Affidavit of Malcolm Frasier re TA's Interrogatories 12/28/73	1/25/74
*	59.	Pls' Notice of Taking Deposition Upon Oral Examination and Subpoena Duces Tecum - Harold L. Trigg	3/15/74
*	60.	Pls' Notice of Taking Deposition Upon Oral Examination and Request for Production of Documents - Harold Shanen	3/22/74
*	61.	Pls' Order to Show Cause for an Order to Compel Testimony of Harold L. Trigg Pursuant to F.R.Civ. P. 37(a)(2) and 37(a)(4); Affidavit of Morril; Letter from Morril to Griesa, J.; Supporting Memorandum	4/3/74
	62.	Affidavit of Allen Taylor in Opposition to Pls' Motion to Compel Testimony of Harold L. Trigg Pursuant to F.R. Civ. P. 37(a)(2) and 37(a)(4); Supporting Memorandum	4/3/74
*	63.	Notice of Taking Deposition Upon Oral Examination and Request for Production of Documents--Ds Bailey, Braun, Butcher, Feldman, Ronan, Yunich	5/6/74
*	64.	Pls' Supplemental Interrogatories to City Ds'	7/8/74
*	65.	Pls' Second Interrogatories and Request for Production of Documents to TA	7/17/74
*	66.	Pls' Letter to Griesa, J.	7/26/74
	67.	TA's Answers to Pls' Interrogatories and Request for Production of Documents, dated July 17, 1974	8/15/74
*	68.	Pls' Proposed Findings of Fact	9/3/74
	69.	TA's Proposed Findings of Fact	9/26/74

(continued)

Exhibit C

*	70.	Proposed Findings of Fact Agreed to By Pls and Ds (filed by Pls)	10/7/74
	71.	TA's Response to Pls' Proposed Findings of Fact and Counter Proposals of Defendants	10/8/74
*	72.	Pls' Response to Ds' Proposed Findings of Fact and Counter Proposals of Ds	10/11/74
*	73.	DuBois Letter to Griesa, J.	10/11/74
*	74.	Stipulations re: Authenticity of Documents Produced, Authenticity of Medical Records, Waiving Requirement that Depositions Be Signed	10/15/74
*	75.	DuBois Letter to Griesa, J.	10/17/74
*	76.	DuBois Letter to TA re (deposition designations)	10/18/74
*	77.	DuBois Letter to Griesa, J. (re pre-trial conference 11/22/74)	10/18/74
*	78.	DuBois Letter to Griesa, J. (re depositions of TA board)	10/18/74
	79.	TA's Pre-Trial Memorandum	10/18/74
*	80.	Pls' Summary of Proposed Testimony of Pls' Witnesses at Trial	10/18/74
	81.	TA Letter to Griesa, J. (re witnesses at trial)	10/21/74
*	82.	Pls' Pre-Trial Brief on Law	10/21/74
*	83.	Compilation of the Agreed To and Contested Facts Together with Pls' Submissions Regarding Documentation Contained in the Record	10/21/74
*	84.	DuBois Letter to Griesa, J. (enclosing Postal Service settlement)	10/23/74
*	85.	Balber Letter to Griesa, J. (re credentials of Frances Rowe Gearing, M.D., pls' witness at trial)	10/29/74
	86.	TA Letter to Griesa, J. Outlining Proposed TA On-Site Tour	11/4/74
*	87.	DuBois Letter to Griesa, J. (re TA on-site tour)	11/8/74
	88.	Court's Memorandum to Counsel of TA Tour	11/13/74
	89.	Court's Memorandum of TA Tour	11/13/74
*	90.	Balber Letter to Griesa, J. (re Blomberg article as evidence)	12/11/74
*	91.	Plaintiffs' Memorandum in Opposition to the Admission of Certain Evidence	12/16/74

(continued)

Exhibit C

*	92.	DuBois Letter to Griesa, J. (re proposed order to hear expert witnesses)	12/27/74
	93.	Court's Order for Dole, Etzioni, Gollance, Kreek, Trigg, Lukoff, Primm, Rosenthal and Higgins to Testify	12/30/74
	94.	Court's Order for Densen-Gerber to Testify	1/27/75
*	95.	Update to February 7, 1975 of Pls' Ex. 31--Compilation of the Agreed to and Contested Facts Together with Pls' Submissions Regarding Documentation Contained in the Record	2/7/75
*	96.	Pls' Memorandum Relating to TA Tour	2/17/75
*	97.	Pls' Memoranda on (1) federal law on confidentiality; (2) analysis of TA rules and regulations and job experience eligibility requirements as they relate to the structure of the TA employment system	2/21/75
*	98.	DuBois Letter to Griesa, J. (re above--with exhibits)	2/24/75
	99.	TA Letter to Griesa, J. (re above)	2/28/75
	100.	Ds' Memorandum Relating to the Confidentiality of Methadone Maintenance Treatment Program Records	2/28/75
	101.	Ds' Memorandum Relating to "Package Insert"	2/28/75
*	102.	DuBois Letter to Griesa, J. (re above)	3/7/75
*	103.	DuBois Letter to Griesa, J. (re census data)	4/4/75
*	104.	DuBois Letter to Griesa, J. (objecting to viewing of TV clip)	7/21/75
*	105.	DuBois Letter to Griesa, J. (re confidentiality of patients' records - enclosing Federal Register HEW guidelines)	7/29/75
*	106.	Letter to Court from Pls reiterating objection to TV news report viewing	7/30/75
*	107.	DuBois Letter to Court enclosing slip opinions --Green v. Mississippi Pacific RR Co., and Harris v. Kent Board of Barberin[illegible]	8/6/75
*	108.	Notice of Submission of Final Judgment and Final Judgment; Letter	9/29/75
*	109.	Pls' Memorandum in Support of Their Motion for Costs and Attorneys' Fees Pursuant to Title VII of the 1964 Civil Rights Act; Letter	10/9/75
	110.	Letter from the Corporation Counsel to Griesa, J. (re final judgment)	10/17/75

(continued)

*	111.	DuBois Letter to Griesa, J. (re injunctive relief against City Ds)	10/31/75
	112.	Ds' Memorandum Opposing Pls' Motion for Costs and Attorneys' Fees	10/31/75
	113.	Letter from Summers to Griesa, J. opposing attorneys' fees	11/3/75
	114.	Ds' Proposed Final Judgment	11/3/75
*	115.	Pls' Reply Memorandum in Support of Their Motion for Costs and Attorneys' Fees	11/26/75
*	116.	Pls' Memorandum in Support of Their Proposed Order and in Opposition to TA's Proposed Counter-Order	11/26/75
*	117.	Letter from Pls to Griesa, J. (re attorneys' fees)	12/2/75
*	118.	Letter from Pls to Griesa, J. (re permanent injunction)	1/30/76
	119.	Letter from TA to Griesa, J. (re above letter)	2/6/76
*	120.	Pls' Letter to Griesa, J. (re above letter)	3/9/76
*	121.	Pls' Letter to Griesa, J. (re back pay and retroactive seniority)	4/7/76
	122.	Permanent Injunction and Judgment and Supplemental Opinion	5/5/76
*	123.	Pls' Motion to Supplement and Modify the Court's Order of May 20, 1976; Supporting Memorandum; Affidavits	9/24/76

EXHIBIT D—RESUMES OF PLAINTIFFS' ATTORNEY

ELIZABETH B. DuBOIS

Date of Birth: September 9, 1940

Education: Harvard Law School, LL.B. 1965
Magna Cum Laude
Radcliffe College, B.A. 1962
Cum Laude

Employment:

Director and President, Legal Action Center, New York, New York	1973-present
Counsel, Vera Institute of Justice, New York, New York	1972-1973
Staff Attorney, NAACP Legal Defense and Educational Fund, Inc., New York, New York	1968-1972
Staff Attorney, Legal Aid Agency of the District of Columbia, Washington, D.C.	1967
Special Assistant to the Executive Director of the Staff (James Vorenberg), President's Commission on Law Enforcement and Administration of Justice, Washington, D.C.	1966-1967
Law Clerk to Judge Henry W. Edgerton, United States Court of Appeals, D.C. Circuit, Washington, D.C.	1965-1966
Summer Associate at Paul, Weiss, Rifkind, Wharton & Garrison, New York, New York	Summer 1964
Civil Rights work in Jackson, Mississippi	Summer 1963

Bar Admissions:

New York	1965
District of Columbia	1967
United States Supreme Court	1969
Second Circuit Court of Appeals	1972
Southern District of New York	1973
Eastern District of New York	1973

Committee and Board Memberships:

Board of Overseers of Harvard College	1975-present
Overseers' Committee to Visit Harvard Law School	1971-present
Executive Committee of the Association of the Bar of the City of New York	1973-present
New York State Bar Association	
Executive Committee of Criminal Justice Section	1975-present
Co-Chairperson, Committee on Legal Representation of Indigents in the Criminal Process	1975-present
Governor Carey's Task Force on Law Enforcement	
Chairman, Subcommittee on Narcotics and Victimless Crimes	1975-present
Subcommittee on Corrections	1975-present
New York Committee of the United States Commission on Civil Rights	1970-1976
Committee on Federal Legislation of the Association of the Bar of the City of New York	1972-1973
Americal Civil Liberties Union Equality Committee	1970-1972

Major Litigation:

At the NAACP Legal Defense and Educational Fund, Inc. I handled a large number of federal cases on the Court of Appeals and United States Supreme Court levels including, e.g.: Groppi v. Wisconsin, 400 U.S. 505 (1971)(which I argued in the United States Supreme Court); United States v. Bobby Seale, 461 F.2d 345 (7th Cir. 1972); Cassius Clay v. United States, 403 U.S. 698 (1971).

I have been primarily responsible for such complex federal ligitation as Chance et al. v. Board of Examiners et al., during all the years of its litigation (major court decisions and pending proceedings in this case include: 330 F.Supp 203 (1971), aff'd, 458 F.2d 1167 (1972); 496 F.2d 820 (1973); 534 F.2d 993 (1976); cert. denied, 95 S.Ct. 123 (1974); appeals pending, 2nd Cir. Nos. 76-7348 and 76-7470; petition for certiorari pending U.S.Sup.Ct. No. 76-344).

I have also been involved in and ultimately responsible for virtually all the litigation conducted by the Legal Action Center since it commenced operations in the spring of 1973.

Exhibit D

ERIC DAVID BALBER

Office: 271 Madison Avenue
New York, New York
(212) 679-6502

Home: 600 West End Avenue
New York, New York
(212) 799-1377

Born October 6, 1947
Miami, Florida

Education

Columbia Law School, J.D. 1972
Harlan Fiske Stone Scholar
Employment Rights Project
Columbia Legal Assistance Resources
Columbia Legal Services
Research Assistant to Professor George Cooper

The George Washington University, B.A. 1969
Degree "With Distinction"
Political Science Major

Employment

Staff Attorney, Legal Action Center, New York, New York	1973 - Present
Staff Attorney, Vera Institute of Justice, New York, New York	1972 - 1973
Intern, New York City Environmental Protection Administration, Program Planning Division, New York, New York	Summer 1970
Intern, United States Department of Commerce, Office of Minority Business Enterprise, Washington, D.C.	Summer 1969
Intern, Office of Hon. Claude Pepper, United States House of Representatives, Washington, D.C.	1968 - 1969
Intern, District of Columbia Department of Public Health, Research and Planning Division, Washington, D.C.	Summer 1969

Bar Admissions

New York State
United States District Court, Southern District of New York
United States District Court, Eastern District of New York
United States Court of Appeals, Second Circuit

Member, Association of the Bar of the City of New York

Exhibit D

MARK C. MORRIL

Office: 271 Madison Avenue
New York, New York
(212) 679-6502

Home: 924 West End Avenue
New York, New York
(212) 866-8545

Born: April 26, 1947
Boston, Massachusetts

EDUCATION

Columbia Law School
J.D. June 1972
Law Review, Board of Editors
James Kent Scholar (highest honors third year)
Harlan Fiske Stone Scholar
Teaching Fellow
Columbia Legal Assistance Resources

Tufts University
B.A. in history and French, June 1969
Magna Cum Laude

Institut d'Etudes Politiques (University of Paris)
Two semesters, 1967-1968

EMPLOYMENT

Staff Attorney, Legal Action Center, New York, New York	1973-Present
Law Clerk to Honorable Jack B. Weinstein, United States District Court, Eastern District of New York	1972-1973
Summer Associate, Coudert Freres, Paris, France	Summer 1971
Management Intern, United States Department of Labor, Boston, Massachusetts	Summer 1970
Evaluation Analyst, City of Boston Model Cities Administration	Summer 1969

BAR ADMISSIONS

New York State
United States Court of Appeals, Second Circuit
United States District Court, Eastern District of New York
United States District Court, Southern District of New York

COMMITTEE AND BAR ASSOCIATION MEMBERSHIPS

Association of the Bar of the City of New York
Committee on State Courts of Superior Jurisdiction

New York State Bar Association
Executive Committee of Criminal Justice Section
Co-Chairperson, Committee on Representation of Indigents in the Criminal Process

EXHIBIT E—AFFIDAVIT OF
MICHAEL MELTSNER DATED OCTOBER 29, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

CARL A. BEAZER, et al., : 72 Civ. 5307

Plaintiffs, : (T.P.G.)

-against- :

NEW YORK CITY TRANSIT AUTHORITY, et al., :

Defendants. : AFFIDAVIT

- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MICHAEL MELTSNER, being duly sworn, deposes and says:

1. I am one of the attorneys in the above captioned matter and I make this affidavit in support of the motion by plaintiffs and the Legal Action Center of the City of New York, Inc. for award of attorneys' fees. I am a 1960 graduate of the Yale Law School with fifteen years of litigation experience before state and federal courts at both trial and appellate levels. I am a member of the bar of the State of New York, the United States District Court for the Southern District, the Court of Appeals for the Second Circuit, the Supreme Court of the United States and the Courts of Appeals for the Fourth, Fifth, and Eighth Circuits.

2. During the past six years I have been a member of the faculty at the Columbia University School of Law where I teach a clinical seminar, criminal procedure and constitutional litigation. My rank is Professor of Law and I am also a co-director of Morningside Heights Legal Services, Inc., the Law School-sponsored legal services office.

3. Prior to joining the faculty of Columbia Law School I was employed as First Assistant Counsel of the NAACP Legal

Defense and Educational Fund, Inc. (LDF), and the National Organization for the Rights of Indigents (NORI). As a senior staff attorney at LDF and NORI, I supervised civil and criminal litigation brought on behalf of indigents and persons claiming rights under the civil rights laws of the United States. I have been the responsible attorney in the trial on appeal of over one hundred federal court cases, supervised junior attorneys in several hundred others, and argued before the Supreme Court of the United States on six occasions. I have received several citations from the judiciary for the quality of my work before the Courts, including one such a citation from the Court of Appeals for the Second Circuit.

4. I have also served as consultant to a number of philanthropic and professional organizations, including the NAACP Legal Defense and Educational Fund, Inc., the Ford Foundation, the Fund for the City of New York, the New York Urban Coalition, and the Criminal Courts Committee of the Association of the Bar of the City of New York. A curriculum vitae more fully describing my background and experience litigating complex questions of law in the federal courts is attached and incorporated herein.

5. I have participated in the instant case at all stages, up to and including judgment, including pre-filing investigation, case planning, drafting, discovery, briefing, pretrial preparation, and trial. My major responsibilities in this case have included legal research, case planning, brief writing and editing. During the four years that this case has been pending before the court, I have devoted more time to it than to any other litigated action in which I have been involved. On the basis of a review of my records, files and contemporaneous diary entries the hours which I spent on each of these phases is

as follows:

Work on papers, pleadings and briefs	81-1/2
Preparation for depositions, hearings, trial and court conferences	25
Attendance at depositions, hearings, conferences and trial	12
General research, investigation, case planning, communication with and provision of legal advice and representation to class members, monitoring relief	80
Total Time	198-1/2

Dated: New York, New York
October 29, 1976

MICHAEL MELTSNER

Sworn to before me this
29th day of October, 1976.

Notary Public

MARK CHARLES MOARD
Notary Public, State of New York
No. 31-4603403
Qualified in New York County
Commission Expires March 30, 1978

Columbia University in the City of New York | *New York, N.Y. 10027*
(212) 280-3867
SCHOOL OF LAW 435 West 116th Street

Revised 9/76

CURRICULUM VITAE OF MICHAEL CHARLES MELTSNER

Residence: 180 Riverside Drive
New York, New York 10024
(212) 787-6714

Age: 39

Present Position (1970-):

Professor of Law, Columbia University School of Law; Co-Director, Morningside Heights Legal Services, Inc.

Legal Specialties: Criminal Procedure, Clinical Education, Constitutional Litigation, Civil Rights, Litigation Skills, Psychology and Law. Morningside Heights Legal Services is a law school sponsored legal services program in which third year students represent indigent clients under faculty supervision.

Position (1961-1970):

First Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc. (LDF); Co-Director, National Office for the Rights of the Indigent (NORI).

As LDF First Assistant Counsel and Co-Director of the NORI Program, I supervised civil and criminal litigation of both organizations, the staffs of which numbered over 20 attorneys, numerous student assistants, and a national network of 300 cooperating attorneys. As the Fund handled more litigation before the United States Supreme Court each year than any law office, other than that of the Solicitor General, my daily work was intimately tied to practice before the Court.[1] As a member of the LDF and NORI staff I tried and/or participated in the appeals of several hundred cases before federal district courts, courts

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1. I have argued the following Supreme Court cases: Coleman v. Alabama, 377 U.S. 129 (1964), see also 389 U.S. 22 (1967); Biggers v. Tennessee, 390 U.S. 404 (1968); Turner v. Fouche, 396 U.S. 346 (1970); In re Burrus (reported with McKeiver v. Pennsylvania), 403 U.S. 528 (1971); Neil v. Biggers, 409 U.S. 188 (1972); and Warner v. Flemings, 413 U.S. 1346 (1974).

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of appeals, and in the state courts.[2]

Education:

A.B., Oberlin College, 1957.
LL.B., Yale Law School, 1960.

Other Academic Positions:

Clinical Associate, Department of Psychology, Teachers College, 1976-.

Lecturer on Criminal Law, New York University School of Law, 1969-70.

Professional Associations:

Consultant, Legal Action Center of the City of New York (1973-).
Member of the Board (1975-).

Member of the Board, Institute for Applied Study of Social Systems (1974-).

Society of American Law Teachers (1974-).

Consultant, regarding public interest law, to the Ford Foundation (1974) and the Fund for the City of New York (1974).

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2. Illustrative of the diverse subject matter of these cases are the following decisions: Jackson v. Godwin, 400 F.2d 529 (5th Cir. 1968) (prisoners' rights); Beck v. Winters, 407 F.2d 125 (8th Cir. 1969) (misdemeanants' right to counsel); Smith v. Morrilton, 365 F.2d 770 (8th Cir. 1966) (discriminatory discharge of black teachers); Cypress v. Nonsectarian Hospital, 375 F.2d 648 (4th Cir. 1967); Simkins v. Moses Cone Memorial Hospital, 323 F.2d 969 (4th Cir. 1963) (discrimination against black patients and physicians); Newman v. Piggie Park, 377 F.2d 433 (4th Cir. 1967), modified, 390 U.S. 400 (counsel fees for denial of public accomodation); Ali v. New York State Athletic Commission, 308 F.2d 11 (S.D.N.Y. 1969) (denial of boxing license to black muslim); Maxwell v. Bishop, 398 F.2d 138 (8th Cir. 1968) (constitutional challenge of capital punishment); Lampkin v. Conner, 239 F. Supp. 757, aff'd, 360 F.2d 505 (D.C. Cir. 1966) (apportionment); Kelley v. Althiemer, 378 F.2d 483 (8th Cir. 1967) (school desegregation); Gonzales v. Warden, 21 N.Y. 2d 18, 233 N.E. 2d 265, cert. denied, 390 U.S. 973 (1968) (constitutional challenge to money bail system); Powell v. Wainwright, 403 F.2d 33 (5th Cir. 1968) (due process rights of parolee); Mosher v. LaVallee, 491 F.2d 1346 (2d Cir. 1974) (voluntariness of guilty plea).

Committee on Criminal Courts, Law and Procedure, Association of the Bar of the City of New York (1970-73).

Member of the Board of Overseers of the Center for the Study of Violence, Brandeis University (1967-73).

Judicial Citations:

Smith v. Morrilton, 365 F.2d 770, 784 (8th Cir. 1966) (Blackmun, J.).

Flemings v. Chafee, 300 F. Supp. 193, 203 (E.D.N.Y. 1971) (Weinstein, J.).

Flemings v. Chafee, 458 F.2d 544, 556 (2d Cir. 1973) (Kaufman, J.).

Publications:

A. Books

Toward Simulation in Legal Education: An Experimental Course in Pretrial Litigation (with P. Schrag) (Published by grant from the Council on Legal Education for Professional Responsibility, New York, 1975).

Public Interest Advocacy: Materials for Clinical Legal Education (with P. Schrag) (Little, Brown and Co., Boston, 1974).

Cruel and Unusual: The Supreme Court and Capital Punishment (Random House, New York, 1973).

B. Articles and Journal Contributions

"The Fight to Save Mozart," MORE, April, 1975.

Review: "Trial Manual for the Defense of Criminal Cases," ALI-ABA CLE Review, Feb. 14, 1975.

"Cruel and Unusual Punishment," New York Times, Op-Ed Page, Oct. 11, 1974.

"Stolen: One 1965 E ick," New York News Magazine, May 5, 1974.

Review: "Cruel and Unusual Justice," by Jack Newfield, New Republic, Apr. 6, 1974.

"Test Case Planning for the Trial Bar (with P. Schrag), Trial Magazine, Jan./Feb. 1974.

"Legal Aid After the Walkout" (with P. Schrag), New York Times, Dec. 23, 1973.

"Post Litigation Strategy" (with P. Schrag), Pro Bono Report, Dec. 1973.

"Negotiating Tactics for Legal Services Lawyers, (with P. Schrag), 7 Clearinghouse Review 259 (1973).

"An Act to Promote the Rehabilitation of Criminal Offenders in the State of New York," 24 Syracuse Law Review 885 (1973) (with M. Caplan and W. Lane).

"Litigating Against the Death Penalty," 82 Yale Law Journal 1111 (1973).

"Clinical Education at Columbia: The Columbia Legal Assistance Resource," 24 Journal of Legal Education 237 (1972).

Review: "Law Against the People," New York Times, Mar. 5, 1972.

"Capital Punishment: The Moment of Truth," Juris Doctor, Nov. 1971.

"Minimum Standards Proposed to Govern Bail Practices in Courts of the State of New York (for the Committee on Criminal Courts of the Association of the Bar), 26 The Record 402 (1971).

"The Future of Correction: A Defense Attorney's View," 17 Crime and Delinquency 266 (1971).

"Equality and Health," 115 University of Pennsylvania Law Review 22 (1966).

"Pre-Trial Detention, Bail Pening Appeal, and Jail Time Credit: The Constitutional Problems and Some Suggested Remedies, 3 Criminal Law Bulletin 618 (1967).

"Southern Appellate Courts: A Dead End," in Southern Justice (Friedman, ed.) (Pantheon, New York, 1965).

Addenda

"Report from a CLEPR Colony" (with P. Schrag), 76 Col. L. Rev. 581 (1976).

EXHIBIT F—AFFIDAVIT OF ARTHUR LIMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

CARL A. BEAZER, et al.,	:	72 Civ. 5307
Plaintiffs,	:	(T.P.G.)
-against-	:	
NEW YORK CITY TRANSIT AUTHORITY, et al.,	:	
Defendants.	:	AFFIDAVIT

- X

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

ARTHUR L. LIMAN, being duly sworn, deposes and says:

1. I am a member of the firm of Paul, Weiss, Rifkind, Wharton & Garrison and Chairman of the Board of the Legal Action Center.

2. I am familiar with the nature and history of the Beazer litigation, having been Chairman of the Board of the Legal Action Center throughout the course of the litigation and having read the Court's main decision when it was issued. I have also reviewed papers furnished me from time to time by plaintiffs' counsel which set forth the history of the case, the kinds of issues raised and resolved therein, and other matters relevant to the amount appropriate for an award of attorneys' fees.

3. As Chairman of the Board of the Legal Action Center, I am familiar with the exceptional quality of the legal work done by Elizabeth DuBois and the staff attorneys under her supervision. I am also familiar with the reputation of Professor Meltsner as a preeminent litigator in the field of civil rights, and I have reviewed the resumes of Ms. DuBois and Messrs. Balber, Meltsner, and Morril.

4. I have had extensive experience in billing for legal services at my law firm and in participating in proceedings to determine counsel fees in class actions and derivative suits. In my opinion, attorneys with the experience and credentials of Ms. DuBois and Professor Meltsner to carry the senior responsibility in a litigation would be entitled to bill their time to a client at a rate of not less than $100 an hour on a non-contingency retainer. The time of junior lawyers -- associates at law firms -- would, in my opinion have been billed at from $40 to $75 depending on their experience, and law students at no less than $25 an hour.

5. Where fees are contingent on results, then premiums above normal time charges are warranted for success. In my experience, depending on the complexity of the case, and above all, on the benefits conferred on the client class, the fees awarded by courts on contingency matters have ranged from a premium of 50% above time to as much as three times the normal hourly rate.

Dated: New York, New York
October 28, 1976

ARTHUR L. LIMAN

Sworn to before me this
28 day of October, 1976

Notary Public

JAY HIMES
Notary Public, State of New York
No. 31-4525415
Qualified in New York County
Commission Expires March 30, 1978

Affidavit of William Josephson dated November 15, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER, et al., Plaintiffs,	:	72 Civ. 5307
-against-	:	(T.P.G.)
NEW YORK CITY TRANSIT AUTHORITY, et al., Defendants.	:	AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

WILLIAM JOSEPHSON, being duly sworn, deposes and says:

1. For more than twenty years I have been a member of the bar of the State of New York. For nearly ten years I have been a partner in Fried, Frank, Harris, Shriver & Jacobson, 120 Broadway, New York, New York 10005 (hereinafter "Fried, Frank"). Prior to that time I worked as a lawyer in two United States Government agencies. Before that I was associated with Paul, Weiss, Rifkind, Wharton & Garrison.

2. I make this affidavit at the request of plaintiffs' attorneys in connection with their application to fix the amount of attorneys' fees.

3. I am familiar with how New York law firms determine time charges for lawyers and bill clients. For several years I was a member and then Chairman of the Manage-

ment Committee at Fried, Frank. I am now a member of the Finance Committee of Fried, Frank. I have had much experience in billing for legal services at my law firm.

4. I am familiar with the nature and scope of the Beazer litigation. I read the court's main decision when it was issued. I have also reviewed papers furnished me by plaintiffs' counsel, setting forth the history of the case and summarizing the work done and the kinds of issues raised and resolved therein, and other relevant matters.

5. I have reviewed the resumes of Elizabeth B. DuBois, Michael Meltsner, Eric D. Balber and Mark C. Morril, who, I am advised, worked on the Beazer litigation. I also am familiar with the time charges used by each in valuing their services in connection with this application. In my opinion, lawyers with the experience and credentials of Ms. DuBois and Professor Meltsner would be entitled to bill their time to a client at a rate of not less than $100 an hour. In my opinion, lawyers with the experience and credentials of Messrs. Balber and Morril would be entitled to bill their time to a client at a rate of not less than $60 an hour. The time of law students and paralegal employees would, in my opinion, be billed at rates from $25 to $30 an hour.

6. There would not be any differential in the application of these rates depending on the nature of the work actually performed, whether "work on papers, pleadings, and briefs," "preparation for depositions, hearings, trial,

and court conferences," attendance at depositions, hearings, conferences, and trial," "general research, investigation, case planning, etc.", assuming an appropriate division of labor between the more senior and the more junior lawyers with respect to this work.

William Josephson

MARIA McDERMOTT
Notary Public, State of New York
No. 41-2311100
Qualified in Queens County
Certificate Filed in New York County
Commission Expires March 30, 1977

Sworn to before me
November 15, 1976.

Notary Public

Affidavit of Robert Newman, M.D., dated January 19, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER, et al., Plaintiffs,	:	
-against-	:	72 Civ. 5307
NEW YORK CITY TRANSIT AUTHORITY, et al., Defendants.	:	AFFIDAVIT OF ROBERT G. NEWMAN, M.D.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT G. NEWMAN, M.D., being duly sworn, deposes and says:

1. I am presently Associate General Director for Operations, Beth Israel Medical Center, New York, New York, and Assistant Professor in the Department of Community Medicine at Mount Sinai School of Medicine. I am well acquainted with the history of methadone maintenance treatment, having first become aware of the efficacy of the treatment in about 1965 when, as in hereafter described, reports of Dr. Dole's successful work in the area began to be widely disseminated. From 1970 to 1974, I was Director of the New York City Methadone Maintenance Treatment Program, and served as Assistant Commissioner for Addiction Programs of the New York City Department of Health from 1971 to 1974. I also directed the New York City Ambulatory Detoxification Program from 1971 to 1974, and the New York City Narcotics Register from 1972 to 1974. From January, 1975, through March, 1976, I served as a consultant on drug abuse to the Government of the United States, the Governments of Thailand and Hong Kong, the World Health Organization, and the Drug Abuse Council, Inc., of Washington, D.C. I have published numerous articles concerning medical and organizational aspects of addiction treatment. A copy of my resume is appended to this affidavit.

2. I make this affidavit to convey to the Court facts supporting my considered professional opinion that even prior to 1970 methadone

maintenance treatment was generally accepted by the medical community as an established and efficacious method of treating heroin addiction, and that well informed physicians, particularly those practicing in New York City, should reasonably have been expected to be aware of this fact.

3. Beginning in 1965, when Dr. Vincent Dole and Dr. Marie Nyswander first recognized that methadone could be used successfully in the maintenance treatment of heroin addicts, they reported widely on their experience with this therapeutic modality. Papers describing their subsequent clinical and research findings were read at professional conventions such as those of the American Medical Association and the Association for Mental and Nervous Disease, and have been published in a variety of the most prominent and widely circulated professional publications, including the Journal of the American Medical Association, the Archives of Internal Medicine, the New England Journal of Medicine, the Archives of Environmental Health, Hospital Practice, and the Bulletin of the American Psychiatric Association.

4. In 1965, when plans were made for the implementation of a pilot methadone maintenance treatment program to be located at the Morris J. Bernstein Institute of the Beth Israel Medical Center, a completely independent Evaluation Unit, headed by Dr. Frances Gearing, was established at the Columbia University School of Public Health to report on the program's progress and the data regarding the efficacy of methadone maintenance treatment. As additional methadone maintenance treatment programs were established, they were brought within the scope of the Evaluation Unit.

5. Dr. Gearing's Unit reported annually, beginning in 1968, and its reports were overwhelmingly favorable. These findings were widely publicized in the City's daily newspapers, in professional journals, and at meetings of professional associations.

By 1968, when over 1200 patients had been admitted to methadone treatment at Beth Israel, Harlem and Bronx State Hospitals, Dr. Gearing's reported studies had already clearly concluded that the overwhelming

majority of these patients were responding well to treatment, were free of drug abuse, and making excellent overall progress toward social rehabilitation.

6. In addition to Dr. Gearing's Unit, a research group was assembled at Rockefeller University in 1964 to investigate, among other things, both the effects of methadone on psychomotor performance and any adverse medical side effects that long-term methadone maintenance might have. In addition to Drs. Dole and Nyswander, the group included Dr. Norman Gordon and Dr. Mary Jeanne Kreek, who I understand have testified in this action. The reports of the Rockefeller group, which were read at a variety of professional meetings, appeared in a variety of professional journals, and were uniformly favorable. They found no evidence to suggest that maintenance with methadone interferes with a person's ability to perform physical or intellectual tasks of which he (she) might otherwise be capable. The findings of the Rockefeller group were confirmed by a number of researchers doing work in other parts of the country.

7. Beginning in 1968, a series of annual, national conferences on methadone treatment were begun. These conferences, which continue to this day, bring together drug abuse treatment professionals from around the country to discuss the latest scientific studies regarding methadone maintenance treatment, and to exchange data, ideas and experiences regarding how best to deal with former heroin addicts in a clinical setting. The proceedings of the first national conference were published by the Rockefeller University, and the proceedings of the second were published by the International Journal of the Addictions. By the third annual national methadone maintenance treatment conference in 1970, held in New York City, which I attended, the conferences were a well established institution. The third conference had close to 600 registrants; it was co-sponsored by the National Institute of Mental Health and the National Association for the Prevention of Addiction to Narcotics; it was endorsed by the Council of Mental Health

of the Americal Medical Association, the American Psychiatric Association and the New York Academy of Medicine; and its proceedings were published by the United States Public Health Service.

8. . Because of the overwhelmingly favorable evaluative reports regarding methadone maintenance, both the State of New York and the City of New York announced in 1968 that they had independently decided to establish their own methadone maintenance treatment programs. Simultaneously, Dr. Dole's and Beth Israel's initial successess with methadone maintenance treatment were being nationally replicated in locations such as Chicago, Minneapolis, St. Louis, Baltimore, Philadelphia, New Haven and New Orleans. By February 1970, it was decided by the New York City government that a massive expansion of methadone maintenance treatment under the City's auspices was warranted. Thus, in 1970 I was employed by the New York City Health Department to begin planning a City-operated methadone maintenance treatment program that would eventually accommodate some 12,000 patients and of which I would be director. It was my firm conviction then, as it is now, that the safety and efficacy of methadone maintenance treatment had been unequivocally established and that the time had therefore come to make that treatment as widely available as possible.

Robert G. Newman
ROBERT G. NEWMAN, M.D.

Sworn to before me this
19th day of January, 1977.

Rhea L. Davidson
Notary Public

RHEA L. DAVIDSON
Notary Public, State of New York
No. 31-4512091
Qualified in New York County
Commission Expires March 30, 1977

Amended Permanent Injunction and Judgment dated January 24, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL A. BEAZER, et al.,	:	
Plaintiffs,	:	72 Civ. 5307 (T.P.G.)
-against-	:	
NEW YORK CITY TRANSIT AUTHORITY, et al.,	:	AMENDED PERMANENT INJUNCTION AND JUDGMENT
Defendants	:	

WHEREAS,

(1) on May 20, 1976, this Court entered a Permanent Injunction and Judgment against defendants New York City Transit Authority, Manhattan and Bronx Surface Transit Operating Authority, and certain related defendants (hereinafter referred to as the "TA"), paragraphs 4 and 5 of which Order contemplated further action by this Court; and

(2) on September 24, 1976, plaintiffs moved this Court for an order modifying the May 20, 1976 Order; and

(3) on May 5, 1976, this Court declared that plaintiffs were entitled to the award of a reasonable attorneys' fee pursuant to Title VII of the 1964 Civil Rights Act; and

(4) on October 29, 1976, plaintiffs moved this Court for an order declaring defendants' liability for attorneys' fees pursuant to the Civil Rights Attorneys' Fee Award Act of 1976 and fixing the amount of fees;

ACCORDINGLY, this Court having considered all papers and proceedings had herein relating to the above mentioned motions and having held hearings on January 11, 13 and 21, 1977 to consider these matters and having made findings on the record

at these hearings, that

(1) plaintiffs Francisco Diaz and Malcolm K. Frasier are entitled to individual relief; and

(2) plaintiffs Carl A. Beazer and Jose Reyes and class member Nathaniel Wright are not entitled to relief; and

(3) plaintiffs are entitled to the award of a reasonable attorneys' fee.

IT IS HEREBY ORDERED that the decretal provisions of the Permanent Injunction and Judgment, as amended, shall read as follows:

1. Except as specified in Paragraphs 2 and 3, the TA, its members, directors, officers, agents and employees, are permanently enjoined and restrained from denying employment to, or dismissing from employment, any person solely because of present or past participation in methadone maintenance treatment.

2. Except as specified in Paragraph 3, the employability of present or past methadone maintained persons (in all phases of the employment process, including new applications, promotions, transfers, disciplinary proceedings and dismissals) shall be considered by the TA according to appropriate personnel procedures to determine the suitability of the individual for the particular job. In the case of a present or past methadone maintained person, the TA is entitled to take in consideration all relevant factors about the person's drug history, and the quality and reliability of any methadone maintenance program having treated the person, in determining the person's suitability for the job.

3. This injunction does not prevent the TA from using appropriate standards regarding the employability of present or past methadone maintained persons, such as:

(a) A requirement of satisfactory performance in a methadone maintenance program for a specified period, such as a year, as a condition for employment;

(b) A restriction against employment of such persons in sensitive categories such as subway motorman, subway conductor, subway towerman, bus driver, and positions dealing with high voltage equipment.

4. As soon as an appropriate position becomes available, the named plaintiff Francisco Diaz shall be hired by the TA as a Maintaniner's Helper Group (D), or in an equivalent position, with back pay and seniority rights from January 1, 1973. The TA shall not be entitled to use the provisions of New York Civil Service Law §61 (the "one in three" rule) to deny employment to plaintiff Diaz. The amount of back pay received by plaintiff Diaz shall be offset by the amount actually earned from other employment and unemployment benefits.

5. As soon as an appropriate position becomes available, the named plaintiff Malcolm K. Frasier shall be hired by the TA as a Bus Cleaner, or in an equivalent position, with back pay and seniority rights to which he would have been entitled if he had not been initially rejected for employment as a Bus Cleaner. The TA shall not be entitled to use the provisions of New York Civil Service Law §61 (the "one in three" rule) or any other device to deny employment to plaintiff Frasier. The amount of back pay received by plaintiff Frasier shall be offset by the amount

actually earned from other employment and unemployment benefits.

6. All persons who have resigned, been dismissed from or denied TA employment due to present or past participation in methadone maintenance treatment shall be eligible for reexamination for TA employment under the terms of this injunction, and shall be given notice to that effect, pursuant to the following procedure:

(a) Counsel for plaintiffs shall submit for the Court's approval an appropriate list of persons to be given notice, and the text of a proposed notice. The notice shall indicate that a decree has been entered giving relief to plaintiffs' class and shall state that persons who believe they may be entitled to relief under the decree may contact plaintiffs' counsel;

(b) After said list and notice are approved by the Court, the TA shall within one week provide plaintiffs' counsel with the latest, most complete address in its possession for each person on the list and plaintiffs shall promptly mail said notice to all persons appearing on said list;

(c) Plaintiffs' counsel shall submit to the TA the names and addresses of those persons who respond to said notice, or who otherwise contact plaintiffs' counsel, as to whom plaintiffs' counsel believe that they have a bona fide claim to be members of plaintiffs' class;

(d) With respect to persons whose names are submitted to the TA pursuant to subprargraph (c) supra the TA shall, within sixty (60) days of said submission, reexamine said persons to determine their employability

pursuant to the terms of this injunction and shall submit a report regarding same to the Court and to counsel for plaintiffs. After the reports required by this subparagraph are submitted the Court shall take appropriate action.

7. The provisions of ¶6 supra, shall not be to the prejudice of the right of persons claiming to be members of plaintiffs' class to independently notify the TA of their desire to be reexamined for TA employment pursuant to the terms of this injunction. Such persons shall be reexamined as though they were persons whose names had been submitted to the TA pursuant to ¶6 supra, and shall be afforded the same rights given said persons.

8. Fees in the amount of $360,710 and costs and disbursements in the amount of $14,290 shall be paid by the Transit Authority to the Legal Action Center of the City of New York, Inc.

9. The action is hereby dismissed as to plaintiffs Carl A. Beazer and Jose Reyes, and class member Nathaniel Wright, and as to the Civil Service Commission of the City of New York, the Personnel Department of the City of New York, Harry I. Bronstein, Chairman of the Civil Service Commission and Director of the Personnel Department, and David Stadtmauer and James W. Smith, members of the Civil Service Commission and their successors in office, without costs.

10. This Court reserves and retains jurisdiction herein for the purpose of construing or enforcing this order, awarding further plaintiffs' costs and attorneys' fees, if appropriate, and granting any other further relief that may be necessary.

Thomas P. Griesa

Thomas P. Griesa
U.S.D.J.

Dated: New York, New York
January 24, 1977